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TRANSCRIPT OF RECORD 4/6/56

Supreme Court of the United States

OCTOBER TERM, 1955

No. 410

**AMERICAN AIRLINES, INCORPORATED,
PETITIONER,**

vs.

NORTH AMERICAN AIRLINES, INCORPORATED

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PETITION FOR CERTIORARI FILED SEPTEMBER 21, 1955

CERTIORARI GRANTED NOVEMBER 14, 1955

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,041

NORTH AMERICAN AIRLINES, INC.,

Petitioner,

v.

CIVIL AERONAUTICS BOARD,

Respondent

AMERICAN AIRLINES, INC.,

Intervenor

On Petition to Review Order of the Civil Aeronautics Board

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BEFORE THE

CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. —

In the Matter of the Application of NORTH AMERICAN AIRLINES, INC., for authority to conduct its operations under the name North American Airlines, Inc.

APPLICATION

North American Airlines, Inc. is a large irregular carrier holding and operating under the authority of a letter of registration issued by the Board to North American Airlines, Inc., the name of which corporation was at that time Twentieth Century Airlines, Inc. The letter of registration, therefore, is in the name of Twentieth Century Airlines, Inc.

North American Airlines, Inc. was originally incorporated as Twentieth Century Airlines, Inc. on May 4, 1946 in the State of North Carolina. Prior to May 21, 1951 the Company conducted and operated its business under the fictitious name, North American Airlines. On May 21, 1951 the Company filed a certificate of conducting business under the fictitious firm name of North American Airlines in the Office of the County Clerk of the County of Los Angeles, State of California. Said certificate was thereafter published in a Los Angeles newspaper of general circulation in accordance with requirements of California law where the principal office of the Company was located. Thereafter by amendment to its certificate of incorporation dated March 3, 1952 the name of the Company was changed to North American Airlines, Inc.

3 Until August 19, 1952 there was no rule or regulation of the Civil Aeronautics Board purporting to authorize the Civil Aeronautics Board to grant or withhold authority of an air carrier to operate under any name which it might desire to use. On August 19, 1952 the Board

adopted Regulation Serial No. ER-178, being Amendment No. 7 to Part 291 of the Board's Economic Regulations, under which it is made an express condition upon the operating authority granted to each large irregular carrier that such carrier shall hold out to the public and perform air transportation services, unless otherwise authorized by the Board, only in the name appearing in the letter of registration issued it by the Board.

North American Airlines, Inc. has invested substantial sums of money in the name North American Airlines and has developed substantial good will in that name. North American Airlines, Inc. is the legal and lawful name of the Company and became such legal and lawful name at a time when there was no Board rule or regulation purporting to regulate or control the names of air carriers.

Prior to adoption of this new regulation North American Airlines, Inc. by letter dated March 11, 1952 addressed to the Secretary of the Board, advised the Board of its change of name and suggested reissue of its letter of registration in the name North American Airlines, Inc. No answer to this letter has been received, and no action on the matter has been taken.

It is the position of North American Airlines, Inc.

(1) that Amendment No. 7 to Part 291 of the Board's Economic Regulations was not intended to apply to any change in name which had taken place prior to adoption of the regulation;

(2) that if it were intended to apply to such a change in name, the regulation is invalid, and it is requested, therefore, that the Board issue an order holding the regulation inapplicable to North American Airlines, Inc. or an order granting an exemption from its provisions.

In the event the Board holds the regulation to be applicable to North American Airlines, Inc. it is requested that North American Airlines, Inc. be granted authority to use its proper corporate name, North American Airlines, Inc. in conducting its air carrier operations.

North American Airlines, Inc. has a vested property interest in its name. Under the Board's regulations in effect

prior to September 23, 1952 it had the legal right to use the name North American Airlines and North American Airlines, Inc. in conducting its operations under its letter of registration which constitutes a license to engage in air carrier operation. Amendment No. 7 purports to modify this operating license. Any decision adopted pursuant to Amendment No. 7 which would purport to deny North American Airlines, Inc. the right to use this name would in fact purport to be a modification of North American's operating license.

Unless the relief requested herein is granted, North American requests a hearing on this application.

Respectfully submitted,

(S.) HARDY K. MACLAY,

Attorney for North American Airlines, Inc.

October 6, 1952.

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Orders

Serial Number E-7107

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
Washington, D. C.

Adopted by the Civil Aeronautics Board at its Office in Washington, D. C. on the 28th day of January, 1953.

Docket No. 5774

In the Matter of the Application of NORTH AMERICAN AIRLINES, INC., for Authority to Conduct its Operations Under the Name of North American Airlines, Inc.

Docket No. 5928

In the Matter of an Investigation Pursuant to Section 411 of the Act of Certain Practices of NORTH AMERICAN AIRLINES, INC.

Order

Twentieth Century Airlines, Inc. (Twentieth Century), a North Carolina corporation, was issued a Letter of Regis-

tration as a Large Irregular Carrier on July 22, 1947. Section 291.28 of the Board's Economic Regulations, adopted August 19, 1952, requires that, on and after November 15, 1952, any air carrier holding a Letter of Registration as a Large Irregular Carrier shall do business in the name in which its Letter of Registration is then issued and outstanding. However, such carrier may do business under such other or different name as the Board may by order permit, upon a finding that the use of such other name is not contrary to the public interest. The introductory comment to this regulation states that the November 15, 1952, cut-off date has been fixed so as to enable any carrier which has developed good will in a name different from that in which its Letter of Registration is held, to apply for and obtain permission to use such other name. Also it is pointed out that where good will has been established in a name by use thereof, the Board will deny permission to continue such name only in cases where it believes that a violation of Section 411 may be involved and such fact has been established after notice and opportunity for a hearing.

82 According to information furnished by the applicant, the corporate name of Twentieth Century was changed to North American Airlines, Inc. (North American), on March 3, 1952, by amendment to its certificate of incorporation. On March 11, 1952, North American, by letter, requested the Board to reissue the Letter of Registration heretofore in the name of Twentieth Century to North American. On October 6, 1952, North American applied for Board authorization herein to use said corporate name in its business after November 15, 1952, in lieu of the name "Twentieth Century". In support of its application, North American alleges that: it has invested substantial sums of money and good will in the name "North American" at a time when there was no Board regulation of the names of air carriers. It follows, therefore, that the promulgation of Section 291.28 was not intended to apply to changes in name occurring prior to the adoption thereof. If it were intended to apply to such a change in name, the regulation is invalid on the grounds that (1) North American now possesses a vested property right in such name which the Board may not now abridge; and (2) a denial by

the Board of the application would result in an unlawful modification of the operating license held by North American. In the event the Board holds the regulation to be applicable to North American, the application requests Board authorization for use of such name.

American Airlines, Inc. (American), filed a memorandum on October 17, 1952, requesting denial, alleging that: (1) approval of the application would permit nullification of the cease and desist order Serial No. E-5171 against Oxnard Sky Freight and flouting of the Board's regulatory processes; (2) the name "North American" infringes upon the established name of American, and constitutes unfair competition within the meaning of Section 411 of the Act, and that (3) North American has no vested right or established good will in the name "North American" which the Board is bound to recognize. On November 5, 1952, American filed "Supplement No. One" to said memorandum, setting forth evidence by way of affidavits that confusion results from the deceptive similarity of the name "North American" to the name "American".

We have considered the foregoing matters, and have concluded that they raise important issues of fact and law which can only be decided after a hearing, as is provided for under the aforementioned regulation. Accordingly, we have decided to defer action on North American's request of March 11, 1952, to institute an investigation to determine whether the use of the North American name by the applicant has constituted or does constitute an unfair or deceptive practice or unfair method of competition within the meaning of Section 411 of the Act, from which practice or method the Board should order North American to cease and desist, and to consolidate that investigation for hearing and decision with North American's application in Docket No. 5774. Pending the Board's final decision in this proceeding the continued use of the North American name by applicant shall not be deemed to constitute a violation of Section 291.28.

83 Accordingly, it is ordered that:

(1) An investigation, assigned Docket No. 5928, be and hereby is instituted to determine whether North American in engaging in air transportation under the name of

North American Airlines, Inc., North American Airlines, or North American has been and is engaging in activities and practices in violation of Section 411 of the Act, and if any such violation is established, whether the Board should issue an order directing North American to cease and desist from such violations;

(2) Said investigation be and hereby is consolidated for hearing and decision with North American's application, Docket No. 5774, and that said consolidated proceeding be immediately set down for hearing before an Examiner of the Board at a time and place to be hereafter announced;

(3) Action on North American's request of March 11, 1952, be and it hereby is deferred until final disposition of North American's application herein; and

(4) Except to the extent specifically granted herein, the request of American be and it hereby is denied.

By the Civil Aeronautics Board:

(SEAL)

(S.) M. C. MULLIGAN,
Secretary.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 19th day of February, 1953.

Docket No. 5774

In the matter of the application of NORTH AMERICAN AIRLINES, INC., for authority to conduct its operations under the name of North American Airlines, Inc.

Docket No. 5928

In the matter of an investigation pursuant to section 411 of the Act of certain practices of NORTH AMERICAN AIRLINES, INC.

Order Granting Leave to Intervene

A petition for leave to intervene in the above-entitled proceeding, pursuant to Rule 15 of the Board's Rules of Practice under Title IV of the Civil Aeronautics Act of 1938, as amended, having been filed by American Airlines, Inc.; and

The Board finding from the petition that such intervention will be conducive to the ends of justice and will not unduly impede the conduct of the Board's business;

It is ordered: That said petitioner be and it is hereby granted leave to intervene in the above-entitled proceeding.

By the Civil Aeronautics Board:

(S) M. C. MULLIGAN,

(SEAL)

Secretary

136 Examiner Bryan: Will the parties give their appearances to the reporter at this time.

Mr. Stratton: Howard C. Westwood and Ernest W. Jennes. They are not present at this time. I am appearing, and my name is Clifton J. Stratton, Jr., appearing for American Airlines, Incorporated.

Examiner Bryan: Who appears for North American?

Mr. Maclay: Hardy K. Maclay.

Examiner Bryan: Who appears for Bureau Counsel.

Mr. Johnson: Robert M. Johnson.

139 Direct examination. ✓

By Mr. Stratton:

Q. State your name.

A. Charles R. Speers, 60 Serpentine, Rosslyn Estates, Long Island, New York.

Q. What is your position with the American Airlines?

A. Assistant vice-president and general sales manager.

Q. How long have you held that position?

A. Four years.

Q. What other positions have you held with American?

A. Including predecessor companies I have been district sales or traffic manager at Detroit, Chicago and New York. I have been eastern regional vice-president for American with headquarters in New York, and my present position.

Q. How long have you been with American?

A. Including predecessor companies, for 24 years. Since March 1, 1929.

Q. Do you sponsor Exhibits AA-1 and 2?

A. I do.

Q. Were those prepared under your direction and supervision?

140 A. Yes.

Q. Are they true and correct copies of the things purporting to be copied and are the narratives to these two exhibits true and correct, to the best of your knowledge and belief?

A. Yes, sir.

Q. Is Exhibit No. AA-1 a representative sample of American Airlines' advertising?

A. Repeat the question, please?

Q. Is Exhibit No. AA-1 a representative sample of American Airlines' advertising?

A. It is a representative sample of American's newspaper advertising.

Q. Doesn't it also contain magazine advertising and other items?

A. Oh, yes, I am sorry, I didn't really remember that No. 1 went that far.

Yes, that is representative of American's advertising.

Q. Is American's sales effort limited to advertising?

A. No. American's sales effort includes not only advertising, but also direct selling. If you are referring to space advertising, American's sales effort also includes direct mail, literature, and all other types of selling normally engaged in by any sales department. Advertising represents a very high percentage of our total expenditure.

141 Q. Turning to Exhibit 1, pages 14 and 15, would

you explain a little more fully the items referred to there?

A. Those two pages show literature issued in connection with a motion picture which was produced in about 1936 or '37, I believe. Perhaps before that, describing a motion picture, the name of which was "The American Way." That motion picture was distributed through the usual channels, and shown to luncheon clubs, and schools, and all outlets of that type. The use of the term "American" and "American Way" has been common in American Airlines almost since its inception.

Q. In a number of the advertisements reproduced in Exhibit AA-1, particularly pages 3 and 4, and several of the succeeding pages, the advertisements identify American Airlines only as "American."

Has it been American's experience that such advertisements adequately identify American Airlines to the reader?

A. Yes. We found it advisable about three years ago to simplify our advertising and our signature. Our competitors have very prominent names in advertising, and we believed that we could gain by having as short and simple a name as possible. We introduced this example of signing our or using only the name of American in our so-called billboard advertising, and after approximately, I think a year, or perhaps less, of that style of advertising, we made some checks on the public and found that the identification of American Airlines, as an individual operator, with the name American, was clearly established, and we were satisfied after that check which showed that well over 75 per cent, and as high as 80 per cent, I think clearly identified that as an individual company, and didn't confuse it with Airlines of the United States, or some more general term.

We also experimented with this signature and in fact used it in our outdoors billboards where we simply say "Fly American." We took some checks on that and discovered that the identification of American Airlines with the signature "Fly American" was equally good with the signature "American Airlines."

Q. Now, the use of American alone in some forms of advertising actually goes back further than simply three years, does it not?

A. Yes, as indicated in the exhibit we previously referred to it was used, Exhibit AA-1, Nos. 14 and 15,—is that the way to identify that?

Q. Pages 14 and 15.

A. Pages 14 and 15.

You see evidence of the use of the name "American" alone. Also in Exhibit No. AA-1, page 16, you will see a DC-3 in flight over New York with the identification "American" on it. That was used for, I think, several years. Also our billboards shown on page 13, those are more recent, using the term "Fly America." The slogan "Better by Air" and "Best by American" is one that was used, 143 I think, six or seven years ago.

Q. How much is American currently spending on the newspaper and billboard advertising campaign illustrated on page 3, Exhibit 1?

A. Approximately \$600,000 a year.

Q. What has been your experience as a salesman for American with respect to identification of American, or American Airlines, by members of the public?

A: Well, we have realized that as the industry grew the importance of our name became greater, and the greater the competition the more important the intangibles of name prestige became, and the competition has reached a point now where over many routes the services are so similar that it is the intangibles of name, refinement of service, that determine the selection of a carrier.

We also have realized that with the introduction of low fare services, the inexperienced traveler must be clear in his mind as to just what carrier he is booking with. It is also the fact that in the low fare field you have a high percentage of infrequent travelers. And if they are confused in their purchase of their first trip you may have lost that business for a year, because they may travel only once a year. For that reason we have put more and more emphasis on the name itself.

For example, there have been periods in our advertising experience when we have tried to build up names like "Flagship" and "Mercury" and other forms of identifying of a company, and we concluded that about 144 three years ago that the thing to do was to concen-

trate on the name "American" because that was the most important identification we could have. I think we have succeeded because today it is common in my personal experience to have people refer to it simply as "American." It is as though you said you were the "New York Central." You don't have to say "New York Central Railroad." The public has accepted it all right.

We have a flight called the "Mercury" which is a trans-continental flight and from time to time we have introduced the name of flights into our advertising, but we don't do it so much now because we feel that it rather dilutes the advertising effect insofar as our main signature is concerned. So we don't put quite so much emphasis as we did in those days.

Q. Do you find that members of the traveling public with whom you deal associate particular characteristics with the name "American" or "American Airlines"?

A. Well, I am not sure I am clear on your question.

Q. Do you find that some members of the traveling public have preference for American or American Airlines?

A. Yes. We believe we have established the fact, both through advertising and through superior service, that "American" is America's leading airline, and I think a great many people accept that as fact. Our own surveys have indicated that, and we are satisfied that we have established a reputation for leadership and that many people, particularly people who are coming into the market for the first time, will buy American Airlines service because they have the belief they are buying a leading airline service.

Q. Do you find that members of the public with whom you deal as a salesman for American are familiar with such things as American's routes or types of aircraft used by American and that sort of thing?

A. Very definitely. Much of our advertising is devoted to identifying American with a certain route structure, and with a certain type of superior equipment. A great deal of our advertising has been devoted to routes and equipment.

Exhibit AA-1, page 8, shows a double page spread featur-

ing American's postwar fleet of all-pressurized aircraft, and we have constantly stressed American's equipment. We also have recently entered into a campaign to develop more traffic from the tremendous potential represented by automobile traffic, and have run a series of joint advertisements with both the Avis Company, as shown on page 7 of Exhibit AA-1, and the Hertz Company, shown on page 9, AA-1, where we again use the name "American" prominently to identify our services.

Q. Are the letters appearing as pages 6 through - 12 of Exhibit AA-2 representative of letters received by American Airlines?

146 A. Yes, those are actual letters and they are representative. We receive quite a substantial volume of replies to our direct mail. These are representative.

Q. In your 24 years of experience in selling for American Airlines has there been any change in the extent to which the public identifies American?

A. Very definitely. There was a time during the early days when you had to explain what American Airlines meant. Not only American, but—today with the volume of traffic and the general public acceptance of air transportation, the name "American" alone is very well established, I think, in the public as a whole.

Cross-examination.

By Mr. Maclay:

Q. Referring to page 3, Exhibit 1, do you use there
147 the name "American," and on those same ads if you had the name "North American" do you think that that would identify in the public mind this advertising with the American Airlines?

A. I think there would be an element of confusion in it, yes.

Q. If it said "South American" do you think there would be an element of confusion?

A. I think it is possible.

Q. If it said "All American," do you think there would be confusion?

A. Yes.

Q. If your word "American" was used in conjunction with any other word or words do you think there would be confusion?

A. For the most part, I think when the name "American" appears in connection with transportation I think there is a good possibility of confusion.

* * * * *

148 Q. Can you think of any combination of word with the word "American" that you feel would not lead to confusion?

A. If associated with air transportation, I think not. I think there is always an element, there is a possibility of confusion. I think if the other name were a very much longer name and American was merely one part of four or five words, or something of that kind, it might not, but I can't think offhand of any.

* * * * *

150 Q. You say you took checks on the public with respect to the use of the word "American" and the adequacy to identify "American" in the public mind. Did you actually conduct surveys of some kind?

A. We had two street surveys made in which we questioned people on certain signatures, yes.

Q. Now, these ads that you have in here in Exhibit 1, you have a lot of ads. If all those ads were substantially as they are here, but you had the word "North" in there in the same size letters and wherever "American" was used the word "North" was used, do you feel that that would confuse members of the public?

151 A. Yes, I do. I definitely do. In fact, we have considerable indication that there has been confusion on that very score.

* * * * *

By Mr. Maclay:

153 Q. You say that services are so similar that the name becomes very important? You mean the airline
154 services of all companies?

A. Well, the tendency is for all airline services to become more or less similar as aircraft ranges increase, for example, and it becomes possible for all airlines to operate practically the same route. At one time when aircraft had shorter ranges maybe route distinctions meant something. Today they mean much less. There is a tendency among manufacturers to standardize on certain types of aircraft, and today we have relatively few types of aircraft, whereas 20 years ago we had literally dozens where you could sell equipment; whereas today the equipment advantages are much less than they used to be. The fares are identical today. What few trade practices we have developed over the years gradually have been taken over by competitors and is a natural process, so that there are fewer differences today in services. Competition has picked up the advantages of other carriers to a point where the differences are very subtle and slight in many cases.

Q. You have air travel cards that are issued by American?

A. Yes.

Q. Do you know if on one of those travel cards you used the name, or you have the words, in the upper portion of the card, "North America"?

A. Yes, in very small type on the red card, which is a restricted card, there is a word "North America,"
155 and on the other the word "International."

Q. Are those cards issued by American Airlines?

A. By American and other airlines.

Q. Why did you adopt the wording "North America," do you know?

A. Because they are good only in North America.

Q. It is a geographic matter?

A. Well, I guess I stated it backwards. They are not good outside of North America.

157 Q. Mr. Speers, do you have any particular ads of North American Airlines which, because of format, or color, or the general set-up of the ads, that you feel are

so close to American Airlines' format and color and type of advertising that you feel the particular ads are particularly confusing?

158 The Witness: I don't have any particular ads in mind that I think are more confusing than others. I think any ad that includes "American" and "American Airline" is like to be confusing.

By Mr. Maclay:

Q. Any ad that includes "North American Airlines"?

A. No, that includes the words "American" or "American Airlines." I think it is especially likely to be confusing if as on page 2 you used the same style lettering that American Airlines uses. It is likely to be confusing by reason of the term itself.

Q. With reference—did you say Exhibit 9, page 2?

A. Yes.

Q. By type of lettering, what do you refer to?

A. I refer to that particular style of lettering used both in the signature at the bottom of that ad and at the top of the ad. That is American's style of lettering, as used in its magazine advertising signatures, for example. If you will turn back to page 9 of Exhibit AA-1, you can look at either 8 or 9, and the lettering "American Airlines" is the same style of lettering, slightly slanting. I don't
159 know the exact terminology. The exact description of these letters. But you can see the similarity by looking at them.

Q. They aren't particularly distinctive lettering. It is a normal type of lettering?

A. No, they are distinctive, in our opinion. We adopted that particular signature after a great deal of research. We had formerly used an entirely different type of signature and we finally settled upon this particular type of letter about—I think it was—about four years ago, if I recall.

If you will turn to page 14, of AA-1, you will see our former signature. It is a different style letter.

160 Q. Well, now, other than that ad, the ones you have just pointed out, do you have any other particular ads or particular advertising material of North American that you feel is similar to American Airlines' advertising to such an extent that the type of the ad leads to confusion?

A. I don't—

Mr. Stratton: I object to this as being outside the scope of the direct, and the purpose for which this witness was offered.

Mr. Mclay: This witness stated, Mr. Examiner, that the use of the name "North American" is confusing with the use of the name "American." And where it is used is in advertisements. And the reasons why it is confusing is either solely because of the word "American" or because of the similarity in the format, type, color, and so forth, of the ads, which in this type of case is ordinarily the most important consideration, as to whether the two types of ads are so similar that the types of ads lead the average member of the public to conclude that those are the same airline. And it is of utmost importance, and this witness being the sales manager, and vice-president in charge of sales, is obviously the person who is most familiar with it.

Mr. Stratton: I don't think it is obvious that he is the most familiar with American's advertising at all.

161 Mr. Mclay: I don't care who I ask, just so it is an American Airlines' person in support of your position.

Mr. Stratton: I do not plan to have any witness testify along the lines which he is inferring, Mr. Examiner.

Examiner Bryan: He may answer.

The Witness: I don't agree with you that it is either one or the other. I think it is quite likely that it is both. That the confusion results from both, the similarity in the name and the similarity of the ad. Now, the similarity of the name can make itself apparent in great many ways other than in the printed advertising. For example, radio. So I don't think you can pin it entirely upon a particular signature or layout of an ad, but where the printed signature ~~actually~~ resembled the printed signature we use the

confusion would be that much greater. But I think there would be confusion in any event.

By Mr. Maclay:

Q. You don't have any other particular ads that you want to point out?

A. I don't have any others.

162 By Mr. Johnson:

Q. Mr. Speers, referring to page 14, in Exhibit No. 1, it is my understanding that this is a throwaway sort of advertising rather than a newspaper or magazine ad?

A. It is a folder; yes.

Q. Is it in use today, at the present time?

A. No.

Q. How about on page 16, the exhibit there, is the name "American" at the present time on all the airplanes that American operates?

A. No, we have a different signature on our planes today than is shown here. Today we have "American Airlines."

Q. I would like to have you explain this air travel card a little bit more in how you sell it, to whom you sell it to, and whether it is by in person or mail or what. Expand it a little more for the record to be clear on it.

163 A. The air travel plan has been in existence as a universal air travel plan for about 18 years. The plan is sold primarily by personal solicitation of commercial cost. It involves the signing of a contract and the making of a \$425 deposit with the issuing airline. There are approximately a dozen issuing airlines. That is, airlines who issue cards.

Q. Are the names of these airlines told to the purchaser of the ticket, of the cards?

A. On whom he may use the cards?

Q. Yes.

A. This is a folder which is distributed with each card which gives him instructions about use of the card, yes. And one of the things it explains is what this "North America" and "International" means that we were referring to earlier.

Q. Is North American Airlines one of the sponsors of the plan?

A. No.

Q. Or is it a member of the plan?

A. No.

Q. Does North American Airlines appear in any of the literature that is circulated to the card holder?

A. No, it is not a member of the plan.

Q. And you say that North American—that the companies on the card are explained in the folders or in the brochures that are given to the purchaser?

164 A. Yes, it is, and it is not "North American."

It is "North America." For the most part, the distinction between the two is determined by the color. The printing of the words "North America" and "International" is so small that they are very hard to read. We depend mostly on the color, and the green card is the international card.

Q. To whom, mainly, is the air travel cards sold?

A. Primarily to commercial organizations. They put up the deposit and issue the cards to their employees to be used for air travel on a credit basis.

Q. Only those companies or persons who travel extensively by the plan; is that right?

A. As a rule, because it means putting up a deposit of \$425, so unless you have some volume of travel it wouldn't pay.

Q. Would you say that the ordinary traveler who travels maybe once or twice a year is the holder of an air travel card?

A. No.

Q. Getting back to the name "American" as it has been advertised by your company, would you say that there is much confusion between the word "American" and T. W. A. or United, for instance, in the minds of the average member of the public?

A. No, I think the public has those airlines pretty well established now in mind. I think some years ago perhaps there was, but today I think they are well established.

165 Q. Have you made any surveys with that in mind?

A. Yes, as a matter of fact, one of the checks I

referred to in which we asked people after looking at the ad with the American signature on it to identify it, was designed just to do that, to see whether they were confused in their minds as between all airlines or whether they could identify one, and we had that clearly in mind. The response indicated that the public today is pretty clear in its mind of the individual air carriers.

166 By Mr. MACLAY:

Q. Referring to Exhibit No. AA-2, page 9, and also Exhibit No. 2, page 12, at the top of each of those it says "Dear Mr. C. B. Smith, I am flying with American." Is that in the form that these people send in, or does the individual write that in, himself?

A. I think that is printed on the form.

169 Redirect examination:

By Mr. Stratton:

Q. Directing your attention to Exhibit AA-1, page 7, and particularly the tail of the aircraft appearing in the add on that page, is that typical, or is that the present form of identification used on American's aircraft?

A. Yes, sir. That is the standard identification.

Q. That is, the word "American" alone appears on the tail of the aircraft, and the words "American Airlines" appearing along the body of the aircraft, is that correct?

A. Correct.

Q. That form of identification is also illustrated in Exhibit No. 1, page 8, is it not?

A. Yes, sir.

Q. On some of the aircraft appearing there?

A. Yes, the large aircraft on the left.

172 Direct examination.

By Mr. Stratton:

Q. Will you give your name and address?

A. Frank M. Burg, 3144 Coolidge Avenue, Los Angeles 34, California.

Q. What is your position with American Airlines?

A. District Sales Manager in Los Angeles.

Q. How long have you held that position?

A. I have held the position approximately four and one-half years.

Q. What are your duties as District Sales Manager?

A. As District Sales Manager I am responsible for the development of sales in the Los Angeles District, for the handling of traffic for American Airlines.

I am responsible for the operation of our reservations department which consists of personnel to the extent of about 90 people, our ticket offices where we employ 173 27 people at the present time and an outside sales force of 16 men, including supervisory personnel. It is my responsibility to develop passenger business, and secondly to handle it.

Q. What other positions have you held with American Airlines?

A. I have been a sales representative, Assistant to sales manager, District Sales Manager in Detroit, Director of Sales in Dallas, Texas, and Director of Sales, that is, Regional Director of Sales, in Los Angeles.

Q. When were you first employed by American Airlines?

A. First employed by American in March, 1935, after having spent five years with Western Air Express in Los Angeles.

Q. Do you Sponsor American's Exhibits Nos. AA-4 and AA-7?

A. Yes, I do.

Q. Were these prepared under your direction and supervision?

A. Some of the material was prepared under my direction and supervision. Some of the material, at least a portion of it, was received from people on the outside, such as this letter from Robert M. Light, which is page 2 of Exhibit

No. AA-4. That is a letter received from Mr. Light, who is an attorney at San Bernardino, in November, 1951, in which Mr. Light directs our attention to the fact that 174 he heard a radio broadcast to the effect that we had a \$70 fare to Chicago, and on attempting to purchase a ticket at that fare, at American Airlines' ticket office, he was surprised to find that the charge was \$85 instead of \$70.

The next page is a letter I wrote to Mr. Light pointing out to him that American Airlines did not advertise on the radio, and pointed out that our fare was \$85, which was our tariff, and no doubt there was a misunderstanding as to airlines.

Page 4 of the Exhibit is a copy of a letter that Mr. Light sent to me, addressed to radio Station KMPR, in which he pointed out to them that he had attempted to buy a ticket from American Airlines at the rate of \$70 and was unsuccessful, and paid \$85 for the ticket.

This particular letter inquires as to whether American Airlines did advertise such a fare. Page 5 is another letter from Robert Mack Light to the Radio Station indicating that he had received a letter from the radio station, and indicating also, I believe, that he did not hear the word "North" in the radio advertisement, and mistook it, therefore, for being an American Airlines' spot announcement.

Q. Do you have the originals of the three letters from Mr. Mack Light?

A. Yes, sir.

Q. And the carbon of your letter to Mr. Mack Light?

A. Yes, sir.

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175 Q. Are the items in Exhibit No. AA-4 true and correct copies of the things which they purport to be copies, to the best of your knowledge and belief?

A. Yes, they are.

Q. Mr. Burg, has it been your experience as a Sales Manager for American, and as the District Sales Manager for American that members of the travelling public identify the Company for which you work by the names "American", and "American Airlines"?

A. Yes, sir; that definitely has been my experience. Over the years I have seen an increasing tendency in that
176 direction. Going back to my original association with American Airlines in 1935 I can well recall that people did not associate, did not have an understanding of American, or American Airlines, because I well remember it was necessary then, and in some of the intervening years, to explain American Airlines very thoroughly.

But over the years as the result of advertising and sales effort, and I believe as the result of the type of service we have given people clearly distinguish American Airlines, and they know American Airlines for various reasons.

Q. What are some of the reasons?

A. Well, we are well known, for example, because of our airplanes, the type of aircraft we operate. We have a completely new post war fleet.

People recognize American Airlines because of its service standards, such as its meals, courtesy to customers, and service aboard the airplane, the kind of reservation service we provide in our ticket offices. There is no question in my mind but what they clearly recognize American Airlines for those facts.

The advertising we have done over the years selling American as a leading airline.

Q. To your knowledge are operations in air transportation conducted in the Los Angeles area under the name "North American", and "North American Airlines"?
177

A. Yes, they are conducted, to my knowledge. I have seen advertisements, and I have heard radio spot announcements on North American Airlines, and on occasions television advertising.

I am familiar with the fact that North American Airlines has operated from Lockheed Air Terminal in Burbank as the result of being there and hearing their departure announcements, and there are North American Airlines ticket offices in the Los Angeles area.

Q. Does American also maintain a ticket office at Burbank at the Lockheed Air Terminal?

A. Yes, sir. We have had a ticket office at Lockheed Air Terminal for a number of years.

Q. Is that ticket office under your direction and supervision?

A. Yes.

Q. Have reservations, ticket and sales personnel under your supervision in the Los Angeles area brought to your attention instances of confusion between the names "North American" and "American"?

A. Yes, they have, on numerous occasions. They have talked to me about the confusion between the names "North American" and the name "American Airlines." And it has not been an infrequent occurrence.

178 Q. Now, what form does that confusion take; form or forms does this confusion take?

A. Well, people telephone us thinking that they are calling North American Airlines. To illustrate the point—

* * * * *

The Witness: I have a memorandum to illustrate the point that is specifically from our Chief Telephone Operator. Her Name is Timmers, in which she says that the telephone calls are received from people asking us to accept them on a collect basis, which is contrary to our policy, which are refused, and the questioning of those that are trying to place these collect calls indicates that they are asking for North American Airlines.

* * * * *

179 Q. The original question I asked ~~was~~: What form or forms of confusion had been reported to you by personnel under your supervision?

180 A. One of the forms was this thing that I explained on telephone calls. There have been other forms that are explained specifically in this exhibit. Cases where ticket agents and reservations agents have talked to members of the public who have been confused between American Airlines and North American Airlines.

If you will refer to page 7, Exhibit No. AA-4—well, let us refer to page 6 of Exhibit AA-4. That is a copy of an affidavit that was written after I received a telephone call

from a gentleman who represented himself to be a Mr. James C. Meeks who telephoned me on the telephone that one of our signs was being re-painted by non-union painters, and that unless some action was taken he threatened to picket us.

I asked Mr. Nicholls to check into the situation and call Mr. Meeks. He did so as indicated in this affidavit, and explaining to him that we were not having any signs re-painted, and Mr. Meeks called him back later in the day and advising that the American Airlines office involved was on Hill Street. Well, we have no Hill Street location in Los Angeles. Mr. Nicholls was then informed that it was an error, and it was not American Airlines office, and that it was North American Airlines' sign that was being re-painted.

Q. Mr. Nicholls is an employee under your supervision?

A. Yes, sir. He reports directly to me, and is Manager of our ticket office in Los Angeles.

Q. Now, at the time he took care of the matter discussed on page 6 did he then report back to you and explain how the matter had been ironed out?

A. Yes, sir. He reported back to me and told me about it and I then asked him to put it in writing, which he did in the form of this affidavit.

183 Q. Mr. Burg, refer to pages 6 through 18 of Exhibit No. AA-4. Were the affidavits of which these pages are copies obtained under your supervision and direction?

A. Yes, they were.

Q. Under what circumstances did you obtain these affidavits?

A. Under what circumstances?

Q. Yes.

A. As the result of comments to me on the part of personnel relative to confusion between the names "American Airlines" and "North American Airlines", and "American", and "North American" I asked these people who

were under my supervision to place in writing these specific cases, which they did.

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184 Q. When was this group of affidavits assembled?

A. Assembled last October. I believe all of them were assembled then. Yes, they were. All assembled last October.

Q. Am I to understand from your testimony that the purpose for assembling this group of affidavits was to attempt to pin down the nature of the incidents that had been reported to you from time to time in the past by the personnel under your supervision?

A. That is correct. They are varied, as can be seen by reading them. Some of them were prepared by a ticket agent and some by reservations agents, and one by a supervisor, that I see here, and they were all assembled in October.

Q. Based on your conversations with personnel under your supervision are these pages, 5-6 through 18 representative of the types of incidents involving confusion which you have discussed with the employees under your supervision?

A. Right. Some of them as can be seen have to deal with persons phoning us to ask us for the arrival
185 time of flights which were not American Airline flights. Cases of people walking into our office, our ticket offices, and stating to our ticket agents that they thought they were in a North American office. Page 8 of AA-4 is an illustration of that very last one. This is the case of an individual walking into the Beverly Hills office of American Airlines, wanting to pick up a ticket. Their various types are represented in the various affidavits.

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186 Q. Now, after assembling this group of affidavits, last October, what further steps did you take to determine the nature and frequency of incidents involving confusion between North American and American, occurring in Los Angeles?

A. Well, in November, for a two-week period, specifically

between November 8 and 23rd, I asked the personnel under my supervision to write down cases that came to their attention on a day-to-day basis, where American and North American were confused.

In that two-week period, I received sixteen different cases of confusion from reservations and ticket agents.

Ten of the sixteen cases were received in the first week. The balance of the sixteen in the last week. But there was better than an average of one a day.

Q. Did you provide the personnel with a form to use in making such reports?

A. Yes, I did.

187 Q. All right.

A. This is the form here. It was a dittoed form, which the agent filled out as to date and time that a confusing incident occurred, and the individual filled in the form, saying what the caller said—the individual to whom they were talking said, with respect to confusion on the names.

Q. These are the original reports received?

A. These are the original reports.

Q. And they have been reproduced, have they not, as pages 19 through 34 of Exhibit No. AA-4?

A. That is correct.

Q. Based on your discussions with personnel under your supervision, are the reports reproduced as pages 19 through 34 of Exhibit AA-4, representative examples of the sort of confusion between American Airlines and North American, as reported to you by your personnel?

A. Yes, they are.

Q. Is it American's policy to accept collect telephone calls in the Los Angeles area?

A. No, it is not. We accept no collect calls.

188 Q. Do you know whether North American advertisers in Los Angeles that it accepts collect calls?

A. Yes, I do. I have seen advertisements of theirs stating that they did.

Q. I now show you a document which has been marked for identification as Exhibit AA-10, and call your attention to an advertisement headed "Fly North American Airlines," and in the middle of the advertisement, to the lines "Call Collect TR-0711." Is that the sort of advertisement you had in mind when you said you knew North American advertised that they would accept collect 189 calls?

A. Yes, it is.

Q. Do you know whether they also advertise that on the radio?

A. I have heard radio announcements to the same effect, yes.

Q. Do you know whether attempts have been made to place with American Airlines in Los Angeles collect calls, by persons intending to contact North American Airlines?

A. Yes, I do.

Q. What is the source of that information?

A. The chief telephone operator of American Airlines in Los Angeles, who informs me that we regularly receive calls on a collect basis—

Mr. Maclay: I object, Mr. Examiner, to the answer "regularly receive." I mean, is it ten times a day, or five times a week, or once a month? What is it? All of these conclusions are very difficult to combat when you don't have the people here who are the basic source of information, and I don't think we should be too liberal in permitting these conclusions to go in.

Examiner Bryan: Well, that is quite correct. Can you tie that down?

The Witness: I am in no position to say specifically how many calls are received per day, per week or per month, but I can specifically say that it is a daily occurrence.

190 Now, as to the numbers, I am in no position to say.

Mr. Maclay: You mean that it occurs every day?

The Witness: That is right.

Examiner Bryan: Who did you get this information from, the telephone operator?

The Witness: Yes, the telephone operator has asked me frequently what to do with these calls. We have a clearly fixed policy that we cannot accept collect calls from anyone

but company personnel, and I have instructed her to that policy.

Examiner Bryan: These collect calls are for North American Airlines, is that correct?

The Witness: That is correct.

By Mr. Stratton:

Q. Turning now to Exhibit No. AA-7, is it your understanding that the robbery referred to in the newspaper stories reproduced in that exhibit, which identified the scene of the robbery as an American Airlines ticket office as 631

South Olive Street, in fact took place, in a North American Airlines' ticket office?

A. Yes. We do not have an office at 631 Olive Street, but there is a North American Airlines' office at that address. We had no robbery at any of our ticket offices at the time this article was printed.

Q. I now hand you the document marked Exhibit AA-11 and ask you what you know about that document?

A. This was a sealed envelope that was delivered to American Airlines' office at 521 West Sixth Street, addressed to North American Airlines. This envelope was brought to me. I had the envelope photostated, and afterwards it was returned, in the mails, to North American Airlines.

Q. By "returned," you mean forwarded?

A. Forwarded.

Q. The street address given on the envelope is not the address of American Airlines in Los Angeles?

A. That is the address of American Airlines in Los Angeles, yes.

Q. You did not open the letter?

A. I did not open the letter.

Cross-examination.

By Mr. Maclay:

Q. Mr. Burg, how long ago were you advised to make preparation for this case?

A. The only advice I received was to prepare to run this survey that I previously mentioned, in November—this two week survey, that we discussed before, wherein we asked our agents to write down specifically cases of confusion that came to their attention.

Q. Well, these exhibits, such as Exhibit AA-4, page 8, those were all in October?

A. The affidavits?

Q. Yes.

A. Yes, those were done in October.

Q. Well then you received advice with respect to the case prior to November?

A. I wouldn't say that I received advice with respect to the case.

Q. Well what advice did you receive, then, that caused you to make these affidavits, or have them made up?

A. Well, this matter of confusion was brought to my attention very frequently.

Q. When?

A. When?

Q. Yes.

A. Well, over a period of many months.

Q. By whom?

A. By our personnel. And these affidavits were prepared in October, so that it wasn't conversational and we got something actually on paper from our people. Up until that time, our discussions were all verbal and these cases were brought to my attention in that fashion.

Q. Did you have the affidavits prepared entirely at your own initiative?

A. No, they were prepared because of my own initiative and after discussing the matter with other people in the company.

Q. Well, were you told by someone in the company to get these affidavits?

A. Yes, that is right.

Q. When?

A. It couldn't have been before last October.

Q. Well, it was presumably October since you got them prepared and they are dated in October?

A. Yes, presumably so.

194 Q. Have you heard North American's radio advertising?

A. Yes, I have, on occasion.

Q. Do they ever use the word "American" without using the word "North"?

A. I have never heard any failure to use the word "North." I have heard—I think North American Airlines has been used in each case that I have heard. I think maybe it is because the words "American" and "Airlines" are longer words, but it has occurred to me in hearing these spot announcements that the "American Airlines" was predominant in the broadcast.

Q. Predominant in the sense that the person who was giving the broadcast was given greater emphasis to "American" and to "Airlines" than he was to the word "North"?

A. Well, maybe it is because I am in the position that I am in. Probably the best way I can explain it is as I have, the word "American" and the word "Airlines" have been emphasized to me. I cannot say and will not say that "North" was not used.

Q. You say they have been emphasized to you. What do you mean?

A. Well, those are the two words that have been outstanding in my mind in listening to these spot announcements.

Q. Yes, well that is in your mind, but so far as the broadcast is concerned, is there any difference on the emphasis in the use of the word "North" and "American"?

195 A. I can't testify that I ever heard any difference, no.

196 Q. But you don't operate out of Burbank, do you?

A. No, we don't.

201 Q. Are there other factors other than simply the name of "American" and the inclusion of the word "American" in North American's name, that you feel leads to the confusion that you say exists?

A. Are there any other items? Is that your question?

Q. Any other factors that are responsible for the alleged confusion?

A. No; I think of no others.

204 Further cross examination.

By Mr. Maclay:

Q. Mr. Burg, to your knowledge, is North American Airlines the only carrier that advertises that collect calls will be accepted?

A. No; I have seen advertisements on the part of travel agencies, presumably ticket agencies, indicating that collect calls will be accepted.

Q. As a matter of fact, in the non-scheduled airline industry, do you know whether the non-scheduled airlines quite generally advertise that collect calls will be accepted?

A. I don't know that that is a general practice of the non-scheduled industry; no.

Q. You have seen an ad of North American Airlines that says that.

Have you made any effort to look at other ads to find out whether other ads of other carriers say that?

A. I have seen other ads that have said that; yes, sir.

Q. Now, when a collect call comes in to your operator, you don't accept the charges. That is the end of the discussion; is it not?

205 A. Not according to our operators. There is usually a discussion as to why we will not accept the call, and according to reports that the operators have made to me, in the discussion, mention is made by the caller that "Well, this is North American Airlines; isn't it? And I read your ad in the paper. Why don't you accept my call?" or "I heard your ad on the radio."

Q. Well, then, the person making the call, presumably

put in his call to the operator and asked for North American Airlines; is that right?

A. No; I would—I don't know just how that would work. I suppose a person could call and—I don't know where they would obtain our phone number, actually.

Q. Well, probably out of the phone book; wouldn't you guess?

A. Might be.

Q. So apparently the person making the call looked up American Airlines, and got the number.

A. That is certainly a possibility. Certainly.

Q. Well, then, in order for this thing to show any confusion, the person who looked up American Airlines, got the number, called, and then he would have had to say "I am after North American Airlines;" is that right?

A. That would seem to follow; yes, sir. He would get us on the phone and say, he would place a collect call to
206 our telephone number, then our operator would challenge the collect call, saying that we do not accept them, and then the discussion would ensue.

Q. Well, if the person was looking for American Airlines, and called American Airlines, I have difficulty in following just why that same person would then ask for North American Airlines.

A. Well, I can't explain that, either, except that I do know, and have been informed by our switchboard operator, that they get these collect calls, and people are under the impression they are calling North American Airlines.

The mechanics of it, I am not familiar with.

208 Q. On these phone calls, Mr. Burg, have you questioned any of your people with respect to whether any of them were not people calling North American Airlines, but possibly trying to get hold of some other agency or airline? Some other airline that handles collect calls?

A. I haven't specifically asked them "Have you ever received a call from Blank Airlines;" no.

Q. I say, with respect to the way in which you have handled your personnel in this subject matter, the only ones that would be reported to you would be instances where they concluded that it is a North American Airlines confusion?

209 A. No; I think other cases would have been reported to me, too, had it been a problem in the minds of our operators, had there been any—had calls been received with any degree of regularity, I am pretty certain they would have mentioned it to me.

Q. Did you ask them to report all sorts of cases where there was confusion, or just North American Airlines?

A. They reported just North American Airlines confusion to me.

Q. Did you ever sell a ticket to anyone who thought he was getting a North American Airlines ticket?

A. Did I, personally?

Q. Did you or your personnel, under your supervision?

A. Not to my knowledge: I am sure we would have explained the difference.

Q. But someone could have come up to your counter and ordered a ticket to such and such a place, without naming any airline, and then when you gave it to them, the fare would be different, and they would say "look, I thought it was supposed to be \$70?" instead of some other figure, and then you would say "That is North American Airlines."

Do you know of any instance where you have written up a ticket for somebody like that, and then had to take it back, and say "no?"

A. A specific instance I know is this case of Robert
210 M. Light, that we referred to before. He sent someone to an American Airlines office to buy a ticket at a lesser fare.

Mr. Maclay: Which one is that?

Mr. Stratton: Page 2 of Exhibit 4, I believe.

The Witness: In that case, as his letter indicates, he was sent in to your office to purchase a \$70 ticket, and paid \$85 for it.

Cross examination.

By Mr. Johnson:

211 Q. Over what period of time would you say that employees have reported the incidents of confusion to you between North American Airlines and American Airlines?

A. Well, it has been a period of a couple of years, anyway. It has been over a period of many, many months.

Q. It is just over the recent months, previous to this time?

212 A. No.

Q. Or does it extend back further than that?

A. It extends back further than that.

Q. Does it include all the year 1952?

A. I would say so; yes, sir.

Q. Does it include all the year 1951?

A. Yes, sir; I believe so.

Q. How about 1950?

A. I can't be specific on that.

Q. So that your survey, that you conducted in October and November, was based on your experience prior to that date?

A. That is correct.

Q. Or these dates?

A. That is correct.

Mr. Stratton: Mr. Johnson, I am not sure whether that question doesn't contain an ambiguity, in that you stated the survey was based on something. Clearly the survey is for November. If by "based on," you are referring to the things reported in the survey, includes only an occurrence during the two weeks in November. If you by "based on" mean the reason for conducting the survey—

Mr. Johnson: Yes, sir; the survey was conducted for that period of time, because in the past you have had instances reported to you of confusion.

213 The Witness: Yes, sir; that is the way I understood your question.

By Mr. Johnson:

Q. I mean, the confusion, to your knowledge, did not originate in October or November?

A. That is absolutely correct.

Q. This was just the base period taken?

A. Right.

Q. To determine the exact number of those complaints?

A. That is right.

215 Redirect examination:

By Mr. Stratton:

216 Q. Now, in connection with the affidavits which were prepared in October, did you request the personnel to report every instance of confusion between American and North American known to them, or did you give some other form of instruction in connection with the preparation of those affidavits?

217 A. I asked them to report specific cases of continuous confusion that came to their attention, any unusual cases of confusion that came to their attention, or had come to their attention.

For example, here is an unusual one, on page 13 of Exhibit AA-4, written Frank Kirshberg, who made out this affidavit, received a call from somebody telling him that a signboard of ours at Hollywood and Vine was inoperative, and the caller said "You are American Airlines, are you not?"

Well, that is an unusual type of case, which is what I asked for, or repetitious confusion that had come to the attention of an agent. Does that answer the question?

Q. Well, did you ask them to report each and every incident of confusion known to each and every one of them?

218 A. Oh, no. That would have been an impossibility because these people were engaged in answering telephones, and handling many, many customers.

Q. In connection with another question on cross examination by Mr. Maclay, you explained that American does not operate out of Burbank.

Have there been occasions, during the last two or three years, when American has operated out of Burbank Airport?

A. We only use the Burbank airport as an alternate airport. That is, when the LA International Airport is below limits, we have had flights go into the Burbank airport.

But we have not scheduled any flights out of Lockheed Air Terminal.

Recross examination.

By Mr. Maclay:

219 Q. Did you know why you were getting these affidavits and the information on these phone calls with respect to confusion between North American and American?

A. Did I know why?

Q. Yes, sir.

A. Yes, sir, I knew why we were getting them.

Q. Why were you getting them?

A. Well, because there was confusion and we merely asked our people to get the information as evidence of confusion.

Q. To be used where?

A. Well, to be used perhaps here, or perhaps at some future date.

Q. You didn't know that there was a case pending in which you were going to possibly use this material in a hearing?

A. No, I did not know this case was pending. That is correct.

Q. Did you know that you were going to use the material in a case involving confusion between North American and American's name?

A. Yes, I knew that there was a possibility of a case, where it would be, I did not know, or what kind of a case it would be, I did not know, but we recognized it as a problem.

Q. You knew you were getting evidence for a case, didn't you?

A. Yes.

Q. So you proceeded to get affidavits from your personnel to support the confusion allegation; is that correct?

A. That is right.

Q. And you undertook to get the best evidence you could, I assume; is that right?

A. We asked for specific evidence, yes. We asked our people to provide us with specific evidence.

Q. You told them you wanted these affidavits, and you wanted material to support this confusion allegation; is that right?

A. We asked them if they had encountered any confusion between the names, North American Airlines and American Airlines.

Q. You are employed by American Airlines, and presumably you were doing the best job you could for American; is that correct?

A. Yes, sir.

Q. And this was part of your job to get this evidence; is that right?

A. Yes, sir.

Q. Now, did you ask these people to get you everything they could on it, having told them what you wanted?

A. I asked them to be very specific in their comments.

Q. And to get every example they could of specific comments?

A. No, I realized in asking them that they could not remember back many months for all of the cases of confusion that had come to their attention. I realized that fully. Because these people, many of whom are reservation agents,

handle hundreds of—well, literally hundreds of telephone calls per month, and hundreds of passengers per month.

Q. And the ones you wanted them to get information on were the ones where there was some confusion?

A. That is right.

Q. Now you said that you limited your instructions to them, as I recall, to specific cases of continuous confusion. What do you mean by that?

A. Where there had been a repetition of confusion.

For example, people walking into our office with any degree of—well, people walking up to our office in the terminal with any degree of frequency—

Q. Do you mean the same person?

A. No, different people.

222 Q. Well then, what do you mean by frequency?

Your only interest in North American Airlines, at this point—what do you mean by “continuous confusion”?

A. I asked them to tell me, to advise me where a particular type of thing had happened repeatedly.

Q. In other words, if somebody came in and was confused, between North American and American, you wanted that; is that correct?

A. Right.

Q. Well, where do the specific cases of continuous confusion come in? I don't understand what you mean. Each instance is a particular person coming in, and according to the allegations, he is confused on North American Airlines and American.

Now I assume you wanted each of those instances; is that correct?

A. Well, to illustrate the point, if people regularly walked up to you—

Q. Do you mean the same person walking up regularly?

A. No.

Q. Different people?

A. Different people.

Q. At different times?

A. Yes.

223 Q. So each of these is a specific instance that you are talking about?

A. That is right.

Q. All right.

A. If, for example, people made it a habit of walking up to our ticket counters to be checked in for a North American Airlines flight, I wanted to know that.

Q. But all you wanted were specific instances where a specific person came in and was confused on North American and American; isn't that right?

A. I wanted specific examples, yes.

Q. That is right?

A. Yes.

Q. You also said that it was limited to any "unusual cases of confusion" that came to their attention.

What is an unusual case of confusion, here?

A. Where people were clearly—where they clearly walked into our office or called us on the telephone—

Q. You say when they clearly walked into your office?

A. Or called us on the telephone and said "Look, I would like to know what time your flight is arriving" and they gave us a flight number that we did not have. And it was determined that it was North American Airlines' flight.

Q. Are those the only types of confusion you asked them to get?

A. No, that is a type. The other types—

224 Q. Is that, in your opinion, an unusual one?

A. That is unusual?

Q. Yes.

A. No, that is not unusual.

Q. Well then, that is not one of these that you are talking about. You say "any unusual cases of confusion" that came to their attention. Now what do you mean by that?

A. Well, I think we have to separate these things.

Number one; we wanted specific cases of repeated confusion.

Q. Now just a minute, you are not talking about the same person on two occasions?

A. No.

Q. You are talking about specific examples of a type of confusion that is repeated? Is that it?

A. That is right.

Q. You did not want them to give you a type of confusion, if it was not a specific type that had been repeated?

Examiner Bryan: I think we are getting into confusion.

Mr. Maclay: Mr. Examiner, he has made too many statements here which confuses the record.

Mr. Stratton: Mr. Examiner, he interrupted the man in the middle of his answer, took him off in a different direction. Now I think that the witness was about to straighten this thing out until Mr. Maclay attempted to get it snarled up again.

Mr. Maclay: I don't know as of which time you are referring; but I don't think it is straightened out yet.

Examiner Bryan: I don't believe you have helped in getting it straightened out.

I wonder if you couldn't give us some more information as to your instructions to these employees, as to the type of confusion which they were to look out for and report?

The Witness: Well, we asked them to tell us of any instances where American Airlines was confused with North American Airlines.

227 Mr. Maclay: I thought some of the things he had up there that I haven't seen were not phone calls.

Mr. Stratton: Not that were marked for identification. He referred to some memorandum that he had, but they were not being offered as exhibits.

232 Examiner Bryan: I think that is sufficient.
Exhibit AA-7 will not be received in evidence.

Exhibits AA-10 and AA-11 will be received in evidence, with the understanding that two copies will be furnished to the reporter before the close of the hearing, and copies served on the parties.

233 Direct examination.

By Mr. Stratton:

Q. Would you give your name and address to the reporter?

A. Emily Jeanne Newkirk, 906 Wilshire Boulevard.

Q. What is your position with American Airlines?

A. Assistant Ticket Office Manager at the Statler, in charge of the Statler office now.

Q. What previous positions have you held with American?

A. Before that I was the Assistant Ticket Office Manager in charge of the Burbank office, and previous to that I was in reservations.

Q. How long were you at Burbank?

A. About three years.

Q. Can you give us a brief description of the interior of the Burbank Airport?

234 A. The airport now is in a "T" shape, with the entrance at the stem of the "T", with no counters on the immediate entrance, and facing the entrance at that particular view, going in, would be Western Airlines and United Airlines.

At the break of the stem would be North American, on the left of United, and TWA on the right of Western, and then the corridors out, across the top of the "T", would be other carriers, and American is on the right hand wing.

Q. Is the North American counter visible as you enter the airport building?

A. Not at the exact entrance, it is on the inside of the airport, yes, sir.

Q. Well, that is, at what point—

A. Within fifteen or twenty feet inside the terminal building.

Q. While you are still proceeding down the stem of the "T"?

A. Yes.

Q. And at that point is the American ticket counter visible?

A. No, you have to turn a corner to approach the American counter.

Mr. Johnson: Mr. Examiner, may I interrupt here? It might help if she drew a rough diagram of the "T", and placed it in the record, so she could show where all these particular offices were. I think it might help the record to show that.

235

Examiner Bryan: I don't believe that will be necessary. Just what are you trying to establish? Does North American have a ticket office there?

The Witness: Right next to United, facing the entrance of the terminal.

By Mr. Stratton:

Q. And that is visible while you are still in the stem of the "T" entering the terminal?

A. Yes. This is new, and I think was completed, as far as the wing where the American office is now—I am not sure of the month, but I think it was last October or just previous to that. Previous to that American Airlines occupied the position TWA has, and then we were right across from that position. We were in the center of the terminal. Now we are not.

Q. Now as I understand it, the American ticket counter in the Burbank Airport Building is now so located that it is not visible from the stem of the "T", but that you have to turn to your right, whereas, while still in the stem of the "T", the North American ticket counter is visible, not directly ahead, but somewhat to the passenger's left; is that correct?

Mr. Maclay: Mr. Examiner, if this is important, I think there should be a diagram. I don't know what it goes to, but I am confused.

236 Examiner Bryan: I don't know, either. I can't understand the importance of it at this time, anyway.

Mr. Stratton: I think the importance will come out during the further testimony, Mr. Examiner.

Q. Miss Newkirk, I now hand you Exhibit No. AA-4, page nine, being a copy of an affidavit, and ask you if that is your affidavit that is reproduced there.

A. Yes, it is.

Q. In the first paragraph, where you refer to passengers checking in, exactly what do you mean by passengers, by the sentence in which that phrase appears?

A. Where the passengers actually arrived at the Ameri-

can Airlines counter with their baggage and their ticket, and had the baggage brought into our baggage wells.

237 Mr. Stratton: At this point, Mr. Examiner, I would like to have marked as American's Exhibits AA-12-A and B, two coupon books bearing the legend "North American Airlines" on the cover.

Examiner Bryan: They will be marked for identification.

(The documents above referred to as American Airlines Exhibits AA-12, A and B, were marked for identification.)

By Mr. Stratton:

Q. I now show you, Miss Newkirk, American's exhibits marked for identification as AA-12, A and B, and ask you if that is the type of ticket on which the North American passengers to whom you refer attempted to check in at the American Airlines ticket counter?

A. Yes, sir.

Q. With what frequency did this occur?

A. Practically daily, if you were on duty on the night shift. I didn't work the same shift all the time.

Q. Now why is the occurrence more frequent on the night shift than on the day shift?

A. Our agents go off duty before the flights depart from Burbank—

Mr. Maclay: I didn't hear you.

The Witness: Our first agents go off duty before there are any departures out of Burbank on the second shift. In other words, if I were working days, I wouldn't be there at night, when the departures were leaving Burbank.

238 By Mr. Stratton:

Q. Do you remember any particular instances involving such attempted check-in's?

A. One specific instance was when I was having dinner in the Steiner Room, which is the upstairs dining room, in other words, of the terminal, and I was paged back to the counter three times—if I would leave the counter, being the only agent on duty, usually TWA's agent or Western's agents would have me paged back to my counter, because I was the only agent available—which was what called the

pages, and I came down at three times and at no instance were they American Airlines passengers, but North American passengers with their baggage, trying to check in.

Q. Do you have any independent recollection of the Buyers' League script book episodes discussed in the second paragraph of page 9 of Exhibit AA-4?

A. This was the first one of the books that I had actually seen, and the man said that there were pamphlets handed out at their company, or at their organization, wherever they met, that stated American Airlines gave them a discount on their transportation, and when I told him that we didn't have any discounts, that we would be familiar with any brochures or anything put out by American Airlines, and that we had not had any, he argued, and for quite some time, and went away and made a telephone call to his office and then said the slips of paper had said
239 "North American Airlines."

We had several instances after that where they came in with the Buyers' League book for discounts.

Q. Did other instances involving confusion between American and North American occur while you were at Burbank?

A. All types of confusion would occur. Well, for instance, if we were on the morning schedule at the terminal, people would check—this is not, by the way, at this position, where our counter is located now, it was when we were in view of the center of the terminal—I have been gone since the counter was moved—where, when the inbound flights would be coming in, we would get practically all the morning inquiries on the arrival of the flights, which couldn't all be pinned to North American unless they gave us a flight number, but they were checking for the arrival of the American ships and we would tell them our ships wouldn't arrive there.

At the terminal switchboard, where we answered our phone, American Airlines, we got the same inquiries on the phone.

Q. Did you ever have passengers arriving on North

American flights attempt to retrieve checked baggage from American?

A. Yes, sir.

240 Q. Do you know how often these incidents occurred?

A. I would say daily on each one of these instances, at one time or another during the day.

Q. How was mail addressed to American while you were at Burbank; that is, to the Burbank ticket office of American?

A. Most always addressed to the company, and not to us individually.

Q. It would be addressed to American at——

A. American Airlines, Lockheed Air Terminal, Burbank, and very occasionally it might come in an individual's name, but not most of the time.

Q. Did you have any experience with misdirected mail while working at Burbank?

A. Mail addressed to American Airlines, when the contents belonged to North American Airlines, and also our mail addressed to North American Airlines was delivered to North American Airlines.

Q. Would this happen occasionally, or regularly, or frequently, or infrequently?

A. I would say possibly I handled six to twelve envelopes where they came in addressed to us.

Q. That is, they would be addressed to American Airlines at Lockheed Air Terminal?

A. On the outside of the envelope.

Q. And what was the nature of the content of these 241 letters which you discovered were not to American?

A. One specific one was a hotel bill from Kansas City that was addressed to us, where North American had hotelled their passengers, and the bill came to us. When I checked with them they said "Yes, it was theirs."

I had one inquiry as to a refund which I gave one of their agents since it was one of their passengers, and others, I don't remember the contents of them.

242 Q. That is you don't remember the specific contents?

A. No, sir.

Q. Did you ever have personal mail addressed to you that was delivered to North American while you were at Burbank?

The Witness: Our pay checks are addressed to American Airlines. They come out of our New York office and then they are addressed under American Airlines to the managers of the offices, and then our Lockheed Air Terminal address. They went to North American.

Q. Was this one time, or more than once, that something of this sort occurred?

A. That is the one that stands out in my mind. Whether other mail was brought over to us—I think at times our mail was dropped on their counter, because post office delivered to both the offices and to the counters in the terminal.

Q. Why does that particular incident stand out in your mind?

A. I believe it was three or four weeks before we got the letter.

Q. Is there a further factor involved there, as well as the fact that the letter was delivered to North American?

A. In that their chief pilot was named Jim Newkirk.

Q. Is it your understanding he was out of town at the time?

A. Yes, Captain Newkirk was out of town at the time. I think the letter had gotten waylaid on his desk.

Q. But the letter did say on it, "American Airlines," and then under that, your name?

A. My name.

Q. Now Miss Newkirk, you were at Burbank since prior to the first of January, 1951; isn't that correct?

A. Yes.

248 Cross-examination.

By Mr. Maclay:

Q. What is the comparative size of American Airlines ticket counter there, compared with other ticket counters in the terminal?

A. Now or before?

Q. Well, both.

A. Well, before, I would say it was approximately the size of all the counters with the exception of Western and United. Now I would say it is about—

Q. Were they larger or smaller?

A. Western and United were larger.

Q. And now?

A. About a third, or a little bit better than a third.

Q. And now the situation?

A. About a third as large.

Q. Yours is about a third as large?

A. That is right.

Q. As all of the others?

A. They are not all the same size. Western and United have very large counters, and all the rest of them run about two-thirds as large as theirs, and we are about half the size of the smaller counters.

250 Q. Burbank is principally a non-scheduled air line terminal, isn't it?

A. Oh, no. United and Western and TWA are in there.

Q. Well, isn't there a great deal of non-scheduled transportation going in and out of Burbank?

A. All of them that operate from the West Coast go from there, from that area. They don't use any other field.

252 Q. Were there instances of your mail being misdelivered to North American?

A. Other than the check I can't think of any specific instance. There possibly were.

Q. So far as you know there was just one instance of that?

A. That is. I would say one that we would definitely recall, yes.

Q. So far as you know there was only one, right?

A. No, I wouldn't say that. Possibly mail went to their counter, where their agent would bring it over. I wouldn't make a mental note on it.

Q. I mean you don't know about it?

253 A. I would say yes, there were instances, if I had to think back and trace them possibly, yes. I wouldn't know what the contents were.

Q. But you don't know of any instances now, other than the check, is that right?

A. I would say there were instances when our mail went to their counter, yes.

Q. But you don't know of any?

A. Yes, I am saying there are.

Q. Well now, you are saying there are?

A. There are instances.

Q. All right.

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260 Direct examination.

By Mr. Stratton:

Q. Will you give your name and address to the reporter?

A. Corinne Perry, Lockheed Air Terminal, Burbank, Calif.

Q. What is your position with American Airlines?

A. I am a ticket agent in charge of the Burbank office.

Q. How long have you been in charge of the Burbank office?

A. Since January of this year.

Q. Were you an agent at the Burbank office prior to that time?

A. Yes, from October, 1951.

Q. Had you held any previous position with American?

A. Yes, I was in the auditing office from January, 1951.

Q. Miss Perry, I now show you page 18 of Exhibit No.

AA-4, and ask you if that is a copy of an affidavit which you signed?

A. Yes, it is.

Q. Are the matters set forth in there a true and correct statement of your experiences at Burbank?

A. They are.

Q. I now show you the exhibits marked American
261 AA-12A and AA-12B, being tickets of North American Airlines. Is that the type of ticket that was used by passengers who attempted to check in at the American Airlines' ticket counter referred to in the next-to-the-last paragraph of your affidavit?

A. Yes, they are. They would come to the counter with these tickets in their hands and present them to me to attempt to check in for a 9:30 flight. I would take one look at them and say "This is American Airlines." They would stand right there at the counter, they would look at the American Airlines' sign right above our counter, and say "Yes, I know it is."

Q. Turning to page 28 of Exhibit No. AA-4, is that a copy of a report which you filled in and sent to Mr. Burg?

A. Yes, it is.

Q. Is it a true and correct statement of what happened on that occasion?

A. It is.

Q. Turning to page 33 of Exhibit No. AA-4, is that also a copy of a report which you sent to Mr. Burg?

A. That is.

Q. Is that a true and correct statement of your experience on that occasion?

A. It is.

Q. Is it your understanding that North American Airlines has an office in Santa Monica?

262 A. It is.

Q. Now, referring again to the passengers checking in, how frequently has that occurred, in your experience—that is, passengers attempting to check in at your counter on North American tickets?

A. I would say it was nightly occurrence, when we had our counters more in the center of the terminal.

Q. Do you continue to have passengers checking in since the American counter is in the wing of the terminal rather than in the center?

A. Yes, we do.

Q. While you were working in auditing for American, did you encounter any instances of confusion between American and North American?

A. Yes, I did. On several occasions I had hotels calling up inquiring with regard to the method of billing American Airlines for the crews that were staying at the hotels, and on further inquiry was found that they were referring to North American crews.

Q. What was the nature of the inquiry from the hotel? Was this while the crews were still at the hotel or after they had left?

A. They were still at the hotel.

Q. Have you had experience with passengers inquiring as to American's "Fly Now—Pay Later" plan?

263 A. Yes, I have had many inquiries.

Q. Does American Airlines have a "Fly Now—Pay Later" plan?

A. No, they do not.

Q. Did such passengers inquire of you under the impression that American did have a "Fly Now—Pay Later" plan?

A. Yes.

Q. Were you able to ascertain why they thought that American had such a plan, when American does not?

A. Yes, I did. They would ask me about this "Fly Now and Pay Later" plan. I would explain to them that we did not have such a plan, and they would then say that—

264 Q. Would you go ahead.

A. —they would say that they had read an advertisement to this effect.

Q. Were you able to determine whose advertisement they had read?

A. I did.

Q. Whose?

A. I determined, from their conversation, that it was North American Airlines.

Q. I now show you the advertisement that has been identified as Exhibit AA-10, being a North American Airlines advertisement from the Los Angeles Times, in November, 1952, and direct your attention to the line appearing about two-thirds of the way down the advertisement, where it says, "Fly Now—Pay Later."

To your knowledge, is that a type of advertisement that is run frequently by North American in the Los Angeles area?

A. Yes, it is.

265 Q. Are you acquainted with Edward McAndrews?
I am.

Q. What do you understand to be his connection with Twentieth Century?

A. I understand that is an executive of Twentieth Century, and that he is also on the ticket counter.

Q. What do you mean when you say Mr. McAndrews is on the ticket counter?

A. He is there every night, checking in the passengers on North American. In fact, I would regard him as a
266 ticket agent.

Q. Do you know whether he also sells tickets for North American?

A. Yes.

Q. That is at the North American Counter?

A. At the North American counter.

Q. Have you ever discussed with Mr. McAndrews confusion between American and North American?

A. Yes, we have. In fact, it was on December 3, 1952, we had this discussion. He made the remark that many times he had passengers coming up to his counter to purchase tickets—

267 A. —and on further conversation, when they mentioned Dallas, Oklahoma City, or Tulsa, he would

realize that they were in fact American Airlines' passengers.

He further went on to say that if they were Chicago or New York passengers he would do everything he could to steal them.

Cross-examination.

By Mr. Maclay:

268 Q. Now, American Airlines is, probably, the best known air line, being the largest and having done a tremendous amount of advertising, and having pressed its name, as the testimony shows, in advertising, it is the best known airline, probably, that operates. Would you say that is correct, in your opinion?

A. Yes, I would.

269 Q. Do you ever have inquiries at your counter of people who have tickets on airlines other than North American or American Airlines?

A. With regard to what?

Q. Transportation matters?

A. I do have inquiries, but not actually pertaining to the actual transportation that they have at that present time.

Q. What kind of inquiries do you have?

A. Usually inquiries as to our service for future reference.

Q. Well, what kind of inquiries do you have that are not entirely as to American Airlines' service, but inquiries of people who want information with respect to air transportation, other than American Airlines, and other than North American?

Mr. Stratton: Would you read that question, please?

(The question was read.)

The Witness: They would be general inquiries of such a nature as to whether there are scheduled flights out of the Burbank Airport for the East.

Q. Is it your testimony that you never have an inquiry of someone who is seeking information with respect to an airline, other than North American, and other than American Airlines, and having to do with their transportation on some other airline?

A. Not when the airline is represented there in the 270 terminal.

Q. You do have inquiries of airlines that are not represented in the terminal?

A. Yes.

Q. Which airlines?

A. Eastern, Capital, Delta, Colonial:

271 Q. But you don't know of any instance in which anyone has inquired at your counter with respect to transportation on an air line other than American and other than North American, where they serve Burbank?

A. The only questions that I might have would be that people would come up to me and ask where is such and such a counter, when they have, perhaps, just at that moment come off a plane, particularly when they come out through the gate right opposite our counter. We are naturally the first person that they see.

Q. Do you have any inquiries of people who are North American passengers, when you are the first person they see coming through the gate?

A. I do. They invariably take one look at the counter and see American Airlines and produce their ticket and say, "I just arrived on"—whatever flight it is that came in, and "I am on the 9:30 flight out tonight."

Q. You say invariably do that. Do you mean every passenger coming through with a North American ticket does that?

A. There are one or two exceptions, but—

Q. Would you say 99 per cent of North American's

passengers coming in go to your ticket office, at the American Airlines counter, present their ticket to you?

A. I wouldn't know what percentage of North American's passengers that would be.

272 Q. What do you mean by "invariably"?

A. By invariably I mean that the passengers with North American tickets, that come to the counter, are under the impression that they are at the correct counter.

Q. But the "invariably" refers to the number of times, or the proportion of the North American passengers that do that. Now by "invariably" do you mean substantially every North American passenger coming in at Burbank makes a mistake and thinks that your counter is North American's?

A. No, I mean by "invariably" that the people who come to my counter—

Examiner Bryan: Don't you mean that all of those coming in the gate next to your counter might stop and inquire from you as to the location of North American, and not all that might be coming in to the airport at Burbank? Is that what you mean?

The Witness: That is what I mean.

Examiner Bryan: That would be coming into that particular gate, through that particular gate, near your location; is that right?

The Witness: Yes.

By Mr. Maclay:

Q. Now you said that people would come up to your counter, and I guess they were people with North American tickets, and you would say to them, "This is North American Airlines," or "This is American Airlines," and
273 they would look at the sign and say "Yes, I know it is."

Would you explain what was the purpose of that statement? I didn't quite understand it. I wish you would explain it.

A. They came up to the counter with North American tickets, like this one, AA-12-A, and with baggage to check in for a flight. They would present me with this ticket, and

I would tell them that they were at the American Airlines counter, and hand them back their ticket, very clearly, so that they could read it, and they would say, "Yes, I know it is, but I want to check in for your 9:30 flight."

Examiner Bryan: They knew that they were talking to someone from American Airlines, and yet they held a ticket on North American?

The Witness: Yes.

By Mr. Delay:

Q. Now, it is true, isn't it, that at American Airlines ticket counter you can buy transportation on American Airlines or any other scheduled air line?

A. Yes.

Q. But you don't sell transportation non-scheduled air lines; is that correct?

A. Yes.

Q. Was it your testimony that nobody ever came to you at the American Airline ticket counter, having to do with transportation on any of the other air lines that are there in the terminal?

A. Not actually requesting space or reservations.

Q. Did you ever sell at your counter a ticket that had part of the transportation on TWA?

A. Yes.

Q. Did you ever sell a ticket that had part of the transportation on United?

A. Yes.

Q. Northwest?

A. Yes.

Q. Western?

A. Yes.

Q. Is there any scheduled air line over which you have never sold a ticket, at your counter?

A. Possibly.

Q. Now you say that these people would present you with a North American Airlines ticket, and you would say "This is American Airlines" and point to the sign, at the same time showing them their ticket with the name "North American" plainly written on it in very large letters?

A. Yes.

Q. And in answer to your statement that "This is American Airlines," they would say "Yes, I know it is." Is that correct?

A. Yes.

275 Q. And then they would say what?

A. That they wanted to check in for the flight, and when I would explain to them that American Airlines was not the same as North American, they would say "Well, I was under the impression that it was."

Q. Now when you say "they," are there a great many people who specifically said to you, "I was under the impression that American Airlines was North American Airlines"?

A. I have had a great many people say that they were under the impression that they were the same or affiliated company.

Q. Now you had more instances of these various types when your counter was located not in the wing where it is now, but out in the more central area of the terminal. That is correct, is it not?

A. Yes.

Q. Where was North American's counter located at the time that yours was located in the more central area of the terminal? You can show it on the blackboard, if you wish.

A. They were where they are now.

Q. And where were you?

A. Where TWA is.

Q. So you had comparable locations on opposite sides of the main area of the terminal?

A. Yes.

276 Q. Do you know whether any carriers other than North American Airlines have a "fly now, pay later" plan?

A. Not to my knowledge.

Q. How did you happen to know that North American has it?

A. I see the advertisements in the Los Angeles Times every day.

Q. But you have not seen any advertisements of any other air lines as to such a plan?

A. I have not been aware of it.

Q. Is it because you have seen that ad that you refer people who inquire about a "fly now, pay later" plan to North American?

A. Yes, sir.

Q. If someone comes up to your counter and inquires about a "fly now, pay later" plan and mentions nothing about any air line, do you refer them to North American?

A. I wouldn't say that I would refer them immediately, no.

Q. What would you do with them, since you know that, to your knowledge, no other carrier has such a plan, what would you do?

277 A. I would find out exactly where they had heard about it.

Q. Well, what would you say to them?

A. First of all, I would tell them that we do not have such a plan, and I would then ask them where they had heard about it. I would find out that they had read it in the paper.

Q. And what would they have read in the paper, that North American has such a plan?

A. I would assume that they had read North American, and had mistaken it for American.

Q. But they wouldn't tell you that, is that right?

A. They would not tell me that they had read North American.

Q. What would they tell you?

A. They would usually say "I understand American Airlines has a 'fly now, pay later' plan."

Q. And you would say "No, we don't."

A. Yes.

Q. Then what would happen?

A. Sometimes they get indignant, inasmuch as they would claim that we had advertised something that we did not have.

Q. Well, what would you do with them?

A. I would find out what they had read.

Q. And what would they tell you?

A. That they had read in the paper that we had a "fly now, pay later" plan, and I would further ascertain
278 from further conversation, that it was in fact North American that they had read, and had mistaken it for American Airlines, and would then refer them to North American.

Q. So they would tell you that it was North American?

A. They would not tell me that it was North American. They themselves would not mention the word "North."

Q. Well then, if they didn't tell you it was North American you must have told them it was North American, because you referred them to North American?

A. I did.

Q. So you told them it was North American?

A. Yes.

Q. Did you ever make any effort to find out whether any other carrier has a "fly now, pay later" plan?

A. Yes, I have.

Q. And you didn't find that any other carrier has such a plan?

A. No, I don't think so. I won't say that my inquiries were exactly extensive.

Q. Who did you inquire of?

A. I inquired of Air America.

Q. Did they have one?

A. Not that I can recall.

Q. Well you inquired of them. Do you know whether they had one or not, or whether you were told they
279 had one or not as a result of your inquiry?

A. No.

Q. What did they say? Did they say they did not have one? Who did you talk to?

A. I don't recall his name.

Q. What did he tell you?

A. That they did not have.

Q. When was it?

A. Oh, many months ago. I could not give you any definite time.

Q. Would you say a year?

A. Possibly.

Q. More than a year?

A. I don't think so.

Q. Now, more than a year ago, did North American have a "fly now, pay later" plan?

A. Yes, I think they did.

Q. Do you know as of when they put in their "fly now, pay later" plan?

A. No; I don't.

Q. During the past year, though, you have referred all such cases to North American?

A. I have.

Q. Did you inquire of any other air lines as to whether they had a "fly now, pay later" plan?

280 A. U. S. Aircoach.

Q. Did they have one?

A. No.

Q. Who did you talk to?

A. Mr. Hutchinson.

Q. Did you ever inquire of North Star?

A. That is Air America.

Q. It is the same outfit, is it?

A. To my knowledge, it is.

Q. So whatever it is, you inquired as to North Star and Air America?

A. Yes.

281 Q. Well, with respect to this exhibit, AA-4, page 33, apparently you simply assumed that this person was inquiring with respect to North American Airlines?

A. She mentioned the Santa Monica office.

Q. Are there any other air lines with offices in Santa Monica, or air/line ticket agencies?

A. There may be travel agencies, yes.

Q. Travel agencies sell tickets for, usually, a lot of air lines, is that correct?

A. That is right.

Q. Why did you assume, then, that this was the North American Airlines office?

A. For the simple reason that she said "Your Santa

Monica office." Therefore, it would mean that she had called the Santa Monica office of an air line—

Q. Well the "your" would refer to American, wouldn't it?

A. Yes.

282 Q. So that she was not telling you the correct story, apparently, because you know you have no office in Santa Monica?

A. That is right.

Q. Now how did you conclude that she was talking about the North American office?

A. Because I am familiar with the North American office in Santa Monica. I know it, I have seen it many times.

Q. Well, the fact that you are familiar with it, and have seen it, why would that lead you to conclude that she had been talking about the North American office rather than some other office in Santa Monica?

A. Because she mentioned the word "American Airlines."

Q. Well now, when someone mentions the word "American" Airlines to you, does that mean North American?

A. I am with American Airlines, naturally it means American.

Q. Yes. Well then, why did you refer to North American?

A. Because I knew that North American had a Santa Monica office.

Q. But you knew there were other offices in Santa Monica, did you not?

A. To my knowledge, not with the word "American."

Q. So that you assumed that she was confused between North American and American because she inquired of American Airlines with respect to another flight, that you didn't operate?

283 A. That is correct.

Q. She gave you no direct indication that she was thinking of North American? Is that correct?

A. She did give me a telephone number that she had called.

Q. Oh, she did?

A. Yes.

Q. What was the number?

A. All I can tell you is that it had an Exbrook prefix.

Q. It had what?

A. An Exbrook prefix. The actual number I do not remember.

Q. An Exbrook prefix?

A. Yes. That is the Santa Monica area.

Q. The telephone number was the number of North American, was it?

A. It would be with an Exbrook prefix. We don't have any numbers with an Exbrook prefix.

Q. Do you mean all the numbers in Santa Monica with that prefix are North American numbers?

A. No.

Q. Why would you conclude this was a North American number?

A. For the simple reason she was very insistent that she had called our office. The call that she made to me came through the switchboard of the Lockheed Air Terminal, and she would have to ask for American Airlines in order for her call to be put through to our office.

284 Q. Did you check the telephone numbers with the Exbrook prefix?

A. She didn't remember the number. She just told me that the number she called in Santa Monica had an Exbrook prefix.

Q. I see, and from that you concluded that it was North American Airlines?

A. Because the number is very prominent in the yellow pages of the telephone book, which covers the Santa Monica area.

Q. Is there confusion with Air America, too?

A. Yes.

Q. There is confusion?

A. Yes.

Q. Does Air America have an office in Santa Monica, do you know?

A. Not that I am aware of.

Q. Now, referring to Exhibit AA-4, page 28, which is the

report you made, and again the portion that is underlined is the portion that you put in, and the balance of it is in the form that was given to you by American Airlines, in the last sentence you say "The passenger was under the impression she was talking to North American Airlines, and there was definite confusion between the two names."

Can you tell me what happened? How you arrived at the conclusion that she thought she was talking to North American Airlines?

A. We had had the usual conversation about schedules, times of arrival—

Q. Of North American flight?

A. I was talking about American Airlines. What she thought I was talking about, I don't know, at that time, the original conversation.

Q. You didn't know? How did you find out what she thought you were talking about?

A. After I had made the reservation, and had in fact sold her a ticket, she made this comment: "You know, I was told I should not ride American Airlines. That is why I have come to you."

Q. And what connection does that have with North American Airlines?

A. Well, I told her she was on American Airlines.

Q. Yes.

A. Then she seemed very startled and made the comment, "I thought this was North American."

Q. She said she thought it was North American?

A. She made that comment, yes.

Q. You mean she said she thought that your air line, American, was North American Airlines?

A. Yes.

Q. And she did not want to ride on American Airlines?

A. Yes, she made that comment in view of the fact of remarks made to her by someone who had had experience with air lines.

Q. With what air lines?

A. She was told American Airlines. However, I have no idea of whether this person meant North American or American. I did not speak to her about it—did not speak to her friend.

Q. Now she wanted to ride on North American Airlines, but she didn't want to ride on American Airlines, is that correct?

A. Because of the report that she had had.

Q. That American Airlines was late on its schedules?

A. About three days, yes.

Q. Well, you concluded from that, then, and I gather this — if I am wrong, correct me — you concluded from that, then, that there was a mistake in the names, and that she was actually referring to North American Airlines as being late three days?

A. I asked her where she had that report that we had ever been as much as three days late in the last few months.

Q. And where did she get the report?

A. From her friend who had purportedly travelled American Airlines.

Q. Her friend had told her American Airlines was late?

A. That is correct.

Q. How did you conclude it was North American?

A. Because she made the comment that she thought she was talking to North American after I had made the 287 reservations.

Q. Did she keep the ticket, and travel?

A. Yes, she did.

Q. Why did she change her mind and decide to go on American instead of North American?

A. I explained to her the difference between the two companies and that satisfied her.

288 Q. Now, referring to Exhibit AA-4, page 18, the paragraph beginning "During the time I have been stationed at Burbank," you say that passengers frequently contact you, asking you what time your flight will arrive in Burbank, and you tell them you don't have a flight arriving at Burbank, and you refer them to North American Airlines. Why do you refer them to North American Airlines?

A. Because, when they come through the terminal switchboard on to your line, they ask for the arrival time of a specific flight.

Q. And you know that that is the flight time of a North American flight?

A. I don't know that it is the flight time, but the flight number.

Q. Do they refer to a North American flight number?

A. They refer—they call me and they ask me what time flight—whatever the number may be—is arriving, and from that flight number I can tell that it is North American.

Q. Do you know the flight numbers of any carriers other than North American and American Airlines?

289 A. Oh, yes.

Q. Do you know them all?

A. I wouldn't know them all off by heart, but I know the service.

Q. Does Air America go into Burbank, or North Star?

A. Yes.

Q. Do you know their flight numbers?

A. I think it is the one hundred series.

Q. One hundred series?

A. Yes, I think so.

Q. Well, one hundred what?

A. That I have never been able to find out. I never discovered which the series is that the final number would be, either coming in or going out, that I have never been able to discover.

Q. So if someone called you and gave you a flight number in the hundred series, that was in fact a flight of Air American or North Star you wouldn't be able to tell them that that was in fact an Air America or North Star flight?

A. Yes, I would.

Q. You would.

A. Yes, but I wouldn't know whether it was eastbound or westbound?

Q. But you do know the numbers of the flight?

A. The beginning number would indicate a North Star flight, yes.

290 Q. Are Air America and North Star the only carriers that have flights in the one hundred series at Burbank?

A. As far as I am aware.

Q. What are the American Airlines flight numbers?

A. They are their flight numbers?

Q. I mean, does an air line, for example, have all of its flight numbers in a certain hundred series, like one hundred or two hundred, or something like that?

A. To my knowledge, yes.

Q. What series is North American?

A. Two hundred.

Q. Two hundred? They are all in the two hundred series?

A. As far as I know, yes.

Q. So that it is only when you get an inquiry in the two hundred series that you refer to North American Airlines?

A. Yes.

292 Q. With reference to what you call here "A. F. L. Buyers' League Skrip Book," and I am referring again to Exhibit AA-4, page 18, what are these A. F. L. skrip books?

A. I never had a very good look at one. I have had one waved in front of my nose.

Q. Do you know who uses them?

A. They are union members who are also members of the Buyers' League, which is apparently quite a select little group, from what I can find out.

Q. A select little group?

A. As far as I know, it is apparently quite difficult to become a member of the Buyers' League.

Q. Now, you say the skrip book is good on North American Airlines?

A. Yes.

Q. Is it good on any other air lines?

A. Is it good on any other air line?

293 Q. Yes.

A. Not on any of the scheduled air lines, no.

Q. Well, is it good on any other air line, scheduled, non-scheduled, or any other air line?

A. As far as I know, no.

Q. Well, how did you find out it was good on North American?

A. From general inquiry.

Q. From whom? Of whom?

A. From people there in the terminal.

Q. Did you inquire as to whether it was good on any other non-scheduled air line?

A. Yes.

Q. What did you find out?

A. No.

Q. Which air line did you inquire with respect to?

A. U. S. Aircoach.

Q. Who else?

A. That was the only one.

Q. You didn't inquire as to Air America?

A. No.

Q. North Star?

A. No.

Q. Or any other carrier?

A. No.

294 Q. Why did you inquire of U. S. Aircoach, and North American, but not of any others?

A. I don't know.

Q. Why do you refer them to North American instead of to U. S. Aircoach?

A. Because U. S. Aircoach does not have that plan.

Q. I see. North American is the only one you found that has it?

A. Yes.

Q. Would you prefer to refer your passengers to North American over Air America and North Star, for example?

A. Exactly what do you mean by that?

Q. Well, you didn't inquire as to whether North Star or Air America uses the skrip book and yet you have people coming up with this skrip and you refer them all to North American?

A. Yes.

Q. Why didn't you inquire of North American—rather of Air America and North Star, and possibly find out if they had the plan, and maybe refer some of them to them. Why did you refer them all to North American?

A. Because it was generally known that North American was the one who honored those. At the time that this was

going on, North Star was not using the phrase "Air American" to the extent that it is now.

295 Q. What difference would the name they use have to do with whom you refer these people to?

A. Because of the confusion with the name, North American and American.

Q. Do you mean because of the confusion which you feel exists in other peoples' minds, when they give you a skrip book you assume they mean North American; is that correct, that they are trying to get a ticket on North American?

A. I know that they are.

Q. How do you know? If all they tell you is they have a skrip book and they want a ticket, how do you know they are after North American?

A. Because North American is the one that I know that honors that A.P.L. Buyers' League skrip.

Q. But you don't know whether other carriers honor it or not?

A. None of the scheduled air lines do. I know that.

Q. Non-scheduled air lines?

A. The non-scheduled air lines, to my knowledge, they don't.

Q. To your knowledge, they do not?

A. As far as I know they do not.

Q. The next paragraph of the same exhibit. These people check in with American, and they are after North American's 9:30 departure. How do you handle those people?

What happens?

296 A. I ascertain, usually by looking at their ticket, as to what air line they should be checking in at.

Q. Did you ever have anyone else come up to your counter and attempt to check in who had a ticket on another air line? Other than North American and American?

A. No.

Q. Never in your entire experience; is that correct?

A. I have no recollection of such a thing happening.

Q. Air America?

A. Only since our counters have been together.

Q. Well, you have had some with Air America, is that right?

A. Recently, yes.

Q. Why did you say "no?" first?

A. You brought that to my attention.

Q. I asked you specifically if there had been another instance when anyone came to your counter to check in with a ticket other than North American Airlines, and you said no. Then you changed your testimony. Now, which is correct?

A. What I last said was correct. I have had Air America. I regret the error.

297 Q. With respect to the reports of inquiry that you have filled out, which are Exhibits AA-4, page 27, and Exhibit AA-4, page 33, when were these forms given to you?

A. In the month of November.

Q. In November?

A. Yes.

Q. What were you told when they were given to you?

A. I was asked to note down instances where there was confusion between American and North American.

Q. And it was instances that had occurred previously, or that occurred at that time, or later?

A. Just during that time.

Q. During which time?

A. During the period covered by these reports here. I think it was about a two-week period.

Q. Just during a two-week period?

A. Just about then, es.

298 Q. Now, I believe you testified that these instances of confusion occurred very frequently, and I think you said, with reference to people coming through the gate there, they would come up to your counter and it occurred invariably—I don't know exactly what you meant, but I assume you meant there were a lot of them. You only turned in two of these reports. Were there other specific instances that you didn't turn in?

A. There were quite a lot.

Q. Why didn't you turn those in, too?

A. I didn't always have the time to do it.

Q. Just a question of time?

A: It was a question of time. We have a lot of other things to do on the counter.

Examiner Bryan: The two that you did turn in were typical of others that you received, but you didn't reduce those to writing, just those two?

The Witness: That is right.

Examiner Bryan: That is representative of a number?

The Witness: Yes.

300 Direct examination.

By Mr Stratton:

Q. Would you give your name and address to the reporter, Miss Rowley.

A. Bonnie Rowley; address, 521 West Sixth Street, Los Angeles.

Q. What is your position with American?

A. I am a reservationist in the telephone sales department.

Q. How long have you been a reservations agent?

A. Two years.

Q. What are your duties as a reservations agent? Brief

A. Making reservations for passengers who call in, planning itineraries, giving flight information, and various other information. Whatever the case may be.

Q. Is this all in response to telephone calls?

A. Yes.

Q. Do you work with a number of other reservations agents?

301 A. Yes, I do.

Q. And the calls are—well, how does the telephone call get to you, among this group of reservations agents?

A. There is a switchboard, and when an agent is free, the position they are sitting at registers free on the switchboard, and the telephone operator then places another call to them.

Q. Turning to Exhibit No. AA-4, page 10, is that a copy of an affidavit which you signed?

A. It is.

Q. Are the statements there made true and correct, to the best of your knowledge and belief?

A. They are.

Q. Turning to Exhibit AA-4, page 30, is that a copy of a report which you made to Mr. Burg, on a form that had been provided?

A. Yes, it is.

Q. Is it a correct copy of your report?

A. Yes, it is.

Q. And are the statements that you made there true and correct?

A. They are.

Q. In addition to the particular items noted or set forth at pages 10 and 30, which we have just referred to, 302 have you received other telephone calls involving confusion between American and North American?

A. Many.

Q. By "many," how often have you received such calls? Can you place any figure on the frequency?

A. Yes, I would say an average of three or four daily.

Q. Are these two typical or representative of the types of things that are involved in those telephone calls?

A. Yes, they are.

Q. Do you recall any other particular or specific incidents?

A. I can recall many. However, they all follow the same pattern, more or less: Monday before we left to come to Washington I had two, I can recall.

Q. Were they in a similar pattern to these?

A. Similar pattern, yes.

Q. Have you ever discussed the matter of calls involving such confusion with other reservations agents working with you?

A. I wouldn't say we had discussed it, but you can't help but hear, when we are so closely united. There has been some discussion, yes. Because some it has been funny.

Q. Well, from such discussion as you have had, do you

know whether—is it your understanding that the other reservations agents working there received calls of about the same frequency as you do?

303 The Witness: With about the same frequency except for one particular person I remember, who had nine in one day, to the point of being quite annoyed. We were very busy.

Cross-examination.

By Mr. Maclay:

304 Q. When you referred to the others there, were you referring to the other reservations personnel?

A. Yes, I am.

Q. What office is this at?

A. This is American Airlines' downtown office, 521 West Sixth Street, telephone sales department, reservation department.

Q. In Los Angeles?

A. Yes.

Q. How many of you are there there, reservations people, like yourself?

A. At the present time, I am not sure as to the exact number of agents we do have. It is shift work, of course. At one time, in the room, there were approximately 45 to 50 of us.

Q. Forty-five to fifty at one time?

A. Yes.

Q. Then you have two shifts, three shifts?

A. No, we have—let me explain how this works.

For instance, if you work eight to 4:45, that would be one shift. Another shift would be nine to five forty-five, every hour someone comes in to replace someone else, or two or three people. So at the peak of the day when our business is the heaviest, we have quite a full complement.

Q. Forty-five or fifty then?

A. Yes.

Q. Do you know what the total number of girls
305 is that are employed for this type of work in that office?

A. No, I do not, I am sorry.

Q. How many hours a day—

A. We have 91 in the entire reservations department.

Q. Those are not all reservations agents?

A. No.

Q. Well, can you take out the people who are not reservations agents and come up with a pretty good figure as to the total number of reservations agents?

A. Roughly, I would take twenty out that are not.

Q. That would leave you 71?

A. Yes.

Q. So you think there are, depending on whether each girl has three or four a day, you would say there are between 213 and 284 instances of confusion of North American Airlines' name with yours, per day; is that correct? That is, I multiplied 71 by three and got 213, and multiplied four and got 284.

A. Yes, but you understand that is an average, and a rough average, and also, on a busy day.

Q. Oh, well, you didn't mean they had three or four every day? You said they had three or four daily?

A. I said an average of three or four daily.

Q. Well, then, my figure is accurate, so you say on the average there would be between 213 and 284 instances of this confusion in that office, daily?

306 A. Yes.

Q. How many reports of these incidents did you turn in?

A. I believe I turned in three.

Q. There are just two here, aren't there, pages 10 and 30?

Mr. Stratton: Those are the only ones I know of, Mr. MacClay.

By Mr. MacClay:

Q. Referring to Exhibit AA-4, page 30, had you seen the television broadcast the night before?

A. No, I have never seen North American's television broadcast. I don't have a set.

Q. Do you know whether anyone else has television broadcast advertising air transportation?

A. No, I do not.

Q. Why did you assume this was North American?

A. The word—she had "American Airlines" written down. She also had an \$80 fare, which I know North American has.

Q. That is also the fare of some other non-scheduled carriers, isn't it?

A. It could be, but I didn't know about it.

Q. Well, you know North American's fares but you don't know the fares of any other non-scheduled carriers?

A. No, I don't know the fares of all non-scheduled carriers, I am sorry.

307 Q. But you do know North American's?

A. I know North American's.

Q. You concluded this was North American Airlines' television program because you saw the word "America" on something she had, and you saw the fare and it was \$80, and you knew that was North American's fare?

A. Yes.

Q. Is that correct?

A. That is right.

Q. And you sold her a ticket?

A. Yes.

308 Q. Now, referring to Exhibit AA-4, page 10; you refer there to a flight No. 628 from Miami.

Whose flight is that?

A. Now, I remember this lady very well. We had quite a long conversation.

Q. Just a minute. Do you know whose flight that 628 flight is?

A. No, I don't know whose flight 628 is.

Q. All right, go ahead with what you were going to say.

A. She had received this telegram, as I have stated, and you understand, this is very condensed. We had a long

conversation, which I didn't go into on this—and after she read me the telegram, and so on, I suggested North American Airlines. She evidently called North American Airlines and they had no flight 628. She called back, and whether it was a mistake with the telegram, or whether the passenger was confused, or something, on the flight, I don't know.

Q. Well, why did you refer to North American?

A. Because it followed the same pattern as so many other things. Was American Airlines arriving at Burbank?

Q. And it was Flight 628. Are you familiar with the flight numbers?

309 A. I am not familiar with the flight numbers, no.

This Mrs. Rath turned out to be a very nice person.

Q. Good.

A. She was upset about the whole procedure; I gave her my name, she called me back, after she had contacted North American Airlines, asking them if they had a flight, whatever it was, 628. They did not, and she called them back, and then she finally located her passenger.

Q. What line did the passenger arrive on, do you know, finally?

A. She didn't say. She said—this is the way it went, she said she was going to call back North American. So I said "Fine." Then a little bit later she called me back again, and she said "Yes, you were right, I got hold of her. We met some way." So it was definitely North American Airlines.

Q. So the passenger did come in on North American?

A. The passenger came in on North American Airlines.

310 Do you ever have any calls of people who call American Airlines, and make it clear to you that they want a reservation on some other airline other than American Airlines?

A. I have calls from people that want a cheaper fare than American Airlines offers, yes.

Q. Well, do you have any people who call up, for example,

and tell you they want a reservation, and they think maybe they are talking with T.W.A., or they think they are talking with some other airline?

A. No, I never have passengers call that think they are talking to T.W.A. or United, because they hear the word "American Airlines" twice before they ever get to me.

Q. I see. It goes through a switchboard?

A. That is right. And then we also say it.

Q. Do you ever have any calls where they are asking for reservations on North American Airlines?

A. Not to my knowledge. I can't remember having any.

Q. Referring to Exhibit AA-4, page 30. In that case the woman called and she got through to you, and she requested for information about North American Airlines, and she knew she was after North American Airlines because that is what she told you?

A. No, she did not.

Q. She didn't? Well, she was requesting information about—

A. She was requesting information about North American Airlines, but she was under the impression that it was American Airlines. She was fully aware that she was talking to American Airlines.

Q. I see.

A. That is where the confusion arose.

Q. And the only way she found out that it was North American Airlines that she was probably after was you told her?

A. I told her it was probably North American that she had seen, yes.

315 Direct examination.

By Mr. Stratton:

Q. Would you give your name and address?

A. Arthur B. Thompson, Jr., American Airlines, LaGuardia Field.

Q. What is your position with American Airlines?

A. I am the reservation manager for the New York district.

Q. How long have you held that position?

A. Since September, 1952.

Q. What other positions have you held with American?

A. Previous to that time I was assistant regional manager of reservation and ticket offices, and prior to that I have held supervisory positions in New York reservations.

Q. How long have you been associated with American?

A. About nine and a half years.

Q. Do you sponsor Exhibit No. AA-5?

316 A. I do.

Q. Are the matters set forth in there true and correct copies of the documents they purport to be copies of?

A. Yes, sir; they are.

Q. Now, turning to pages 2 through 5 of Exhibit No. AA-5, were those affidavits prepared under your direction and supervision?

A. Yes, they were.

Q. How did you come to have them prepared?

A. I realized that there was confusion between the name "American Airlines" and "North American," through conversations with the people working for me, and conversations with the district sales manager in New York.

At that time we felt that we should take some sort of a study and we prepared a very simple form to be placed at the position of each agent taking telephone calls, for three days in October.

The instructions were given, by me, to my section head, the supervisor of the sales section, in New York; and she in turn passed the information along to the chief agent, and in turn to the head agent, and the instructions very briefly were such that the reservations agents, we requested them to record any confusion that existed in the telephone calls, as they did their daily work.

Q. Were these affidavits then prepared on the basis of the written reports turned in on these forms by the
317 agents?

A. Yes, they were.

Q. And this was a check which covered a three-day period in October?

A. That is correct.

Q. At whose request did you make that check?

A. At the request of the district sales manager in New York.

Q. Is that Mr. Baker?

A. Mr. Richard Baker.

Q. Turning to pages 6 through 38 of Exhibit AA-5, state the circumstances under which those reports were prepared?

A. At the end of October, we decided to continue the study. At that time we were given, by Mr. Baker, a more elaborate form, and at that time we then requested the people to give the facts as they recorded them. That study lasted from the end of October through the end of December, approximately.

Q. It was about two months?

A. About two months.

Q. And these are copies of the reports that were turned in by reservations personnel under your supervision during that two months' period?

A. Yes, they are.

Q. Have you discussed the matter of confusion between American and North American with reservations agents under your supervision from time to time?

318 A. Somewhat, yes, I have. Most of the discussions, however, have been with the supervisor of the section that is responsible for taking the telephone calls.

Q. Based on those discussions, are these reports representative of the type of calls that are received by your reservations agents?

A. I have examined them, and they are representative of the type of call we receive in American Airlines.

319 Cross-examination.

By Mr. Maclay:

323 Q. Did you ever get any calls where people call American Airlines and they actually want information with respect to other airlines?

A. Yes, we do.

Q. And you get other calls where people are asking
324 you about reservations and various things, on other
airlines, other than North American, and other than
American Airlines?

A. Yes, we do.

329 Q. If some one calls up American Airlines, and gets
you on the phone, and says "Is this North American
330 Airlines?" and you say "No, this is American Air-
lines," and they say "Wrong number," does that
indicate to you some confusion in the mind of the person
calling?

A. Yes, it does.

Q. You mean just by virtue of the fact they got the wrong
number?

A. By virtue of the fact that they wanted to talk to North
American, but evidently looked in the telephone book and
found American Airlines' number.

Q. And got the wrong number? They were after North
American Airlines, and they knew it, but apparently they
got the wrong number?

A. Well, there is a very definite relationship between
getting one airline and wanting to get another. It is not
the simple type of a wrong number. The wrong number,
to my way of thinking, would be wanting to dial Twining
8-5000 and dialing Twining 8-4000.

Q. Somebody could be sitting in his office and tell his
secretary to call North American Airlines, and the secre-
tary could pick up the phone and call American Airlines.
That could be very reasonable, could it not?

A. Yes, sir.

Q. Now, the names are different, but the secretary, being
very familiar with American Airlines, and hearing the word
"American" might pick up the phone and call "American."

Then the fellow would get on the phone and say
331 "Is this North American?" and the answer would
be "No, this is American." He would say "wrong

number." Does that indicate confusion in the public mind between North American and American?

A. Well, to answer the question, it would indicate one of two things to me, confusion between the secretary and the caller or passenger, or confusion between the name American and North American. Which one, I couldn't tell.

334 Direct examination.

By Mr. Stratton:

Q. Would you give your name and address to the reporter, please?

A. Yes, Margery Avery, 11 East 78th Street, New York City.

Q. What is your position with American?

A. Reservations agent.

Q. How long have you been a reservations agent?

A. Eleven months, to be exact.

Q. Did you hold any prior position with American?

A. No, not with American.

Q. Had you had previous experience working for any other airline?

A. Yes, Scandinavian.

335 Q. How long were you with Scandinavian?

A. Just three months, it was temporary, prior to coming to American.

Q. Were you in reservations work there, too?

A. Telephone—switchboard, yes.

Q. Miss Avery, in a normal day, while at work as a reservations agent for American in New York City, how much time is there when you are not actually occupied in answering the telephone, completing reservations, or performing duties that involve telephone calls?

A. None, other than one hour for lunch. None at all. Possibly a ten-minute break in the morning, if it is possible to get out, if we are not too busy.

Q. That is the telephone calls come to you continuously?

A. That is right.

Q. Now, is there an arrangement so that at your position

you can tell whether there are callers waiting to talk to a reservations agent?

A. Very much so, yes.

Q. What is that arrangement? How does that work?

A. Well, it is a lighting system, whereby each passenger as he comes in to the main switchboard downstairs, is put on the rack, and he waits there until the downstairs operator can connect him with the reservations agent.

As soon as our lights show available they put them through to us, but in the meantime they keep us re-
336 minded that there are passengers waiting by the lights on the wall.

Q. How many such lights are there and—

A. Well, I have never counted them. Believe me, they are always there. I think there are between thirty and forty.

Q. During what part of the normal day are there some of those lights burning to indicate calls waiting?

A. Nearly all day. Well, all day. There are times when perhaps they won't all be showing as passengers waiting, but that is very seldom.

Q. Turning to Exhibit AA-5, page 3, is that a copy of an affidavit which you signed?

A. Yes, it is.

Q. Are the statements therein true and correct, to the best of your knowledge and belief?

A. They are; yes, sir.

Q. Now, turning to page 15 of Exhibit AA-5, is that a copy of a report which you made to Mr. Thompson?

A. Yes, it is.

Q. And is page 16 likewise a copy of a report which you prepared for Mr. Thompson, or sent to Mr. Thompson?

A. Yes.

Q. And is page 27 also a copy of such a report?

A. Yes, that is right.

Q. Now, in filling in these reports on the forms that
337 were provided, did you attempt to set down everything that had transpired during the call that you were making a note of here?

A. No.

Q. What did you attempt to put down?

A. Well, it was specifically announced that we should keep track of North American's call, not any other non-scheduled carrier, just North American, so that is what I endeavored to do here.

There were others, of course, but these were just the North American.

Q. Well, I am thinking now of—well, take the one on page 27 of the exhibit, for example.

A. I have it.

Q. Do you happen to recall how long that conversation lasted with that passenger?

A. This particular conversation, no, but some of them can be quite lengthy.

Q. In view of the other requirements on your time as a reservation agent, would you have had time to have written out every thing that took place during one of such conversations?

A. Oh, no, it wouldn't be possible.

Q. Am I correct in understanding that you simply made a note of the more salient points?

A. That is right.

Q. Have you had other—well, now, on page 27, you 338 refer to a passenger who insisted that American advertised flights to Miami in the newspapers and magazines, and similarly, in the affidavit on page 3, you referred to a passenger who requested information about American's services to Miami. Are these the only calls that you have received involving service by American to Miami, and newspaper advertising of American's service to Miami?

A. No, American's service to Miami, we get lots of them, but these are the specific North American—we get lots of calls asking for American's service to Miami, but they didn't ask me about it. They just asked me about North American.

Q. Taking the one on page 27, your note here simply says that the passenger insisted that American advertised flights to Miami in newspapers and magazines.

Now, why did you conclude that that was one that you

should make a note of with respect to North American Airlines?

A. Yes; well, they did come in and ask for our flights to Miami.

Q. Yes.

A. I cannot say if that was the specific instance, but in one of them in particular, I asked them if they were sure it was American Airlines; they said "Yes, you advertised American," and I asked them where they saw it and in what magazine, and she said "Just a minute," and went to look at it, and she said "I am sorry, it is North American.

Would you give me their number?" That was one
339 of them. I am not sure if it was this one or one of these.

Q. About how often do you receive calls which in your opinion reflect confusion on the part of the caller between American and North American?

The Witness: To North American Airlines specifically?
Or non-scheduled airlines in general?

By Mr. Stratton:

Q. Well, tell us North American, and then tell us as to non-scheduled airlines generally, if you wish.

340 A. Well, in a week, a five-day week, it will depend largely upon the shift you happen to be working at the time, but in my five-day week I would say an average of ten or twelve calls a week, for non-scheduled airlines, approximately about half of them would be for North American.

Cross-examination.

By Mr. Maclay:

Q. Do you get calls, sometimes, where the person calling wants to get service on American to a point that American does not serve?

A. Yes, we do.

Q. For example, you might get a call asking to take American Airlines from Chicago to New Orleans?

A. Yes.

Q. Do you get a substantial number of such calls, over a period of a week, or pick a number?

A. We do get such calls. I couldn't say how many. We do get them.

341

By Mr. Maclay:

Q. Would you say that, in view of American Airlines' being considered, I think, by a great part of the traveling public probably the top airline, the best known airline, in the United States, that it is more likely that people would call American Airlines for airline information than any other airline?

A. I would like to answer that.

Q. Well, in your work for American, don't you find that there are a reasonable number of calls that you get where the person is seeking airline transportation information?

A. Yes.

Q. If you received a call, and somebody wanted a reservation from New York to Miami, would you conclude from that that he thought that American Airlines was North American Airlines, and that he was confused?

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A. When they come in and say "I want your flight to Miami," yes.

Q. What if they came in and said "We want your flight from Chicago to Nashville," what would you conclude from that?

A. I don't understand what you are getting at. I am sorry.

Q. Well, if they asked for a New York-Miami flight—

A. Yes.

Q. Your conclusion would be what? I mean would you conclude that that meant that they were confused between North American and American?

A. That depends on his approach, when he comes in on the line. Either he says "Well, I want your flight to Miami, or "Does American Airlines fly to Miami" or "Who does go

to Miami?" It depends entirely upon how the passenger approaches you.

Q. Well, if he said "I want your flight from New York to Miami," would you conclude from that that he was confused between North American Airlines and American Airlines?

A. Well, we would assume he wanted one of the American lines, because we answer the telephone "American Airlines."

Q. One of the American lines, which is that?

A. Well, American to Miami, which is not us, because we don't go to Miami.

Q. Would you assume that he was confused as between National and American Airlines?

343 A. No.

Q. Or Eastern and American Airlines?

A. No, because National doesn't sound like American, neither does Eastern. He definitely wants "American," to Miami, and he says so.

Q. So you conclude that most likely he is confused between North American and American?

A. Well, all that is stuck in his mind is American, whether it is North or what it is American to him.

Q. If he asked for a flight between Chicago and Nashville; would you conclude that he was confused at all, that he was thinking of any other airline particularly, or what would you conclude?

A. I don't quite get what you are getting at there.

Q. Well, apparently the only reason that you reached the conclusion that he is confused between North American and American, on a request for your flight from New York to Miami, is because in your own mind you think he should be confused because the two names are similar?

A. No. When he comes in and says "I want American's flight to Miami," it must be some other American, it is not us, because we don't fly to Miami. He specifically says "American to Miami," as he did in several of these instances.

Q. And he could only be confused as between American Airlines, you feel, and some other carrier that has the name "American" in it; is that what you mean?

344 A. That is right.

Q. Now, if he asked you for American's flight from Atlanta to Nashville—

A. We don't fly that.

Q. No, and you don't fly New York-Miami.

A. That is right.

Q. Now, if he asked for American's flight from Atlanta to Nashville, would you conclude that he is confused as between two airlines?

A. We would say American doesn't fly that route, but that is because he hasn't the knowledge of the airlines between those two points. We do have the knowledge. There is an American line that goes to Miami, with "American" in the name.

Q. And it is on that basis that you conclude that he is confused between the two airlines, in the names of each of which is the word "American"?

A. That is right.

• • • • •
Redirect examination.

By Mr. Stratton:

345 Q. Have you ever had a passenger ask you for American's service between Atlanta and Nashville?

A. No.
• • • • •

Direct examination.

By Mr. Stratton:

Q. Would you give your name and address?

A. Barbara Heide, American Airlines Reservations, LaGuardia Field, Flushing 17, New York.

Q. What is your position with American?

A. Reservations agent.

Q. How long have you been a reservations agent for American?

A. Almost nine months.

Q. Did you hold any other position with American?

A. No, I did not.

Q. Have you previously been employed by any other airline?

346 A. No, I have not.

Q. Turning to page 9 of Exhibit AA-5, is that a copy of a report which you made on the form that was provided by Mr. Thompson?

A. It is.

Q. And is page 11 likewise a copy of a report which you made to Mr. Thompson?

A. It is.

Q. And similar is page 25 of Exhibit No. AA-5 a copy of one of the reports which you filled in?

A. It is.

Q. And is page 30 likewise a copy of one of the reports you made?

A. Yes, it is.

Q. And similarly is page 35 one of the reports you made out?

A. Yes, it is.

Q. And page 38, is that also one of them?

A. Yes, that is correct.

Q. In making out these reports did you attempt to set down everything that had been said, or everything that had occurred, or did you merely make a notation of what seemed to you the more salient points?

A. In some I would say I attempted to set down everything, and in others, involving longer conversations, I attempted to condense them into the more salient features.

347 Q. The statement on page 30, for example, of Exhibit AA-5, is that one where you had a longer conversation.

A. Yes, it is.

Q. About how long was that conversation? If you recall?

A. It is difficult to recall exactly, but I would say between two and three minutes. Perhaps a little longer.

Q. Do each of these reports reflect an incident in which, to the best of your knowledge and belief, the passenger was confused between American and North American Airlines?

A. Well, I would say on the last two, that I don't recall

at the present time whether or not the passenger did mention North American specifically.

Mr. Maclay: Is that pages 35 and 38?

The Witness: Yes, that is correct.

However, on the others, there was, I would say—I would say yes, in answer to your question.

348 Q. In other words, you have no present recollection of these things beyond knowing that they are copies of reports which you made on the forms?

A. On the last two, yes.

Direct examination.

349 By Mr. Stratton:

Q. Miss Rowley, in answer to a question from me this morning as to the frequency of calls involving confusion between American and North American received by you, do you recollect the answer you gave?

A. Yes, I do. I said, on the average, of three or four. I meant to say weekly. Evidently I said daily.

Q. Now, to the extent that the record may show that you said daily rather than weekly, you now wish to correct your testimony; is that correct?

A. Yes.

Q. You intended to say three to four weekly.

A. Weekly.

Q. And that was intended to apply throughout your testimony with respect to that?

A. Yes.

Cross examination.

By Mr. Maclay:

Q. Did that pertain to calls that involved something with respect to North American alone, or non-scheduled airlines generally?

A. I would say North American alone.

350 BARBARA A. HEIDE resumed the witness stand, and was examined and testified as follows:

Cross examination.

Q By Mr. Maclay:

Q. With respect to page 30 of Exhibit AA-5, did you say that you didn't know, in this case, whether the passenger specifically mentioned North American or not?

A. No, I did not.

Q. What was it you said, I didn't understand you.

351 A. In answer to which question?

Q. Well, I thought you said, with respect to page 30, that you didn't know whether—

Mr. Stratton: I think the record will show it was the last two, Mr. Maclay.

Mr. Maclay: Thirty-five and thirty-eight?

Mr. Stratton: Yes.

By Mr. Maclay:

Q. What is the telephone NE-9-9000?

A. According to my information, it is the Port of Authority of New York, and stands for New Town 9-9000.

Q. Referring to page 35, why do you refer them to that number?

A. Because that is the number that I was instructed to give, if a number was requested as a source of information for any non-scheduled airline.

Q. Well, in your own mind, do you tie up this affidavit with North American Airlines—I mean this report of inquiry?

A. At the time I did. What made me at the time, I don't know. I don't recall.

Q. Now, referring to page 38, do you in your own mind tie that one up with North American Airlines?

A. At the time I did.

352 Q. Referring to page 11, did you feel that this person was confused as between North American and American Airlines?

A. Very definitely.

Q. She called and she said "North American?" and you said "No, this is American Airlines," and she says "Is this North American Airlines," and you said "American Airlines, may I help you?" and she said "Wrong number."

Do you conclude from that that she is confused as between American and North American?

A. I do.

Q. Well, she knew which airline she wanted?

A. She wanted North American Airlines, and at the time, it seemed as if she couldn't quite understand that it wasn't the same, and almost was wondering why I couldn't say "North American."

Q. Well, she just had the wrong number, didn't she?

A. She hadn't made a mistake in dialing.

Q. How do you know? I agree with you she probably hadn't. The only point I make is this, that the confusion wasn't in her mind. She apparently had gotten the wrong number. But so far as this person's mind is concerned, do you conclude that she was confused as between American and North American?

A. I do.

Q. Well, if she was confused as between the airlines, why didn't she go ahead and do business with American Airlines?

353 A. Evidently, from the statement "wrong number," the passenger wanted to do business only with North American.

Q. Well, then, she certainly knew the difference?

A. Evidently after I insisted that North American was not American she realized that there was a difference.

Q. Do you have any calls at all where it develops that you would conclude that a person was after some airline other than American or North American?

A. I do.

Q. You do or you don't?

A. Yes, I do.

Q. In some instances, even where the names are not at all the same?

A. Well, there are many instances of calls requesting for information on non-scheduled airlines, and in the majority of cases, either I just don't bother or there hasn't been time to pin the passenger down as to what specific non-scheduled airline he was inquiring about, and I would say that is what happened on pages 35 and 38.

354 MARGERY H. AVERY was recalled as a witness by and on behalf of American Airlines, Inc., and, having been previously sworn, testified further as follows:

Direct examination.

By Mr. Stratton:

Q. Miss Avery, do you recollect having received a call involving North American within the past week?

A. Yes.

Q. Would you tell us about that call, what you remember about it?

A. Yes, it was one evening when I was on the night shift and the passenger wanted American's flight to Miami. Of course, we went through the usual thing, she said "You do go to Miami," she was quite insistent about it, and she said "We heard it on Barry Gray's program, he adver-
355 tises American Airlines to Miami."

Q. Do you know whether American Airlines advertises on Barry Gray's program?

A. Well, at that time I must confess I didn't.

Q. Did you then make some inquiries about it?

A. I did, yes.

Q. And what did you find out?

A. Well, I asked one of the agents in the office who was Barry Gray, and he said that he was a disc jockey, and that he was advertising North American.

356 Direct examination.

By Mr. Stratton:

Q. Would you give your name and address to the reporter?

A. Carolyn Houck.

Q. What is your position with American Airlines?

A. Reservation agent.

Q. In New York?

A. Yes, I am.

Q. How long have you been with American Airlines?

A. Approximately nine months.

Q. Have you been a reservations agent all that time?

A. Yes, I have.

Q. Did you ever work for an airline before?

357 A. No, I have not.

Q. Turning to page 8 of Exhibit 5, is that a copy of a report which you made on one of these forms provided by Mr. Thompson?

A. Yes, it is.

Q. Is it a true and correct copy of that report?

A. Yes, it is.

Q. Turning to page 36 of Exhibit AA-5, is that also a true and correct copy of one of the reports you made out?

A. Yes.

Q. In addition to the two incidents noted on these two reports, have you received other telephone calls involving North American and American, and possible confusion between them?

A. Yes, I had one not so long ago, that rather stuck in my memory.

A man called up and said that he had an air travel card with American, and that there were a few gentlemen there with him and they were having more or less of a discussion, and a five dollar bet. I think it was two against three, two that definitely stated that American Airlines and North American were not affiliated, and the other three insisted that North American and American were affiliated, and so evidently the one gentleman didn't believe it so he also got on the telephone, and I told him that he was definitely mis-

358 taken, that there was absolutely no tie between the two, and he lost five dollars.

Q. You wouldn't say that that was typical of the calls you received, though, would you?

A. No.

Q. Have you had other calls in which there was a discussion as to whether American and North American were affiliated?

A. Yes, I have. Many that I haven't written up.

Q. About how often have you received calls involving North American?

A. Well, on a weekly basis, I would say four to six. Sometimes, as has been stated before, it is more, according to the shift you work.

Cross-examination.

By Mr. Maclay:

Q. The four to six calls is that confined only to calls in which you think North American is involved, or is that call as to non-scheduled carriers generally?

A. The statement that they are non-scheduled is correct. I would say that some of them, I am pretty sure—almost quite sure—that they would be definitely North American.

Q. That is, some of the four to six calls weekly?

A. Yes.

X Q. But some of them are just as to non-scheduled carriers generally?

359 A. Yes, that is right.

Q. Do you feel able to split it up and say how many are probably, in your opinion as to North American, and how many are other than as to North American?

A. I would say about two a week, and three, that I could definitely say were as to North American. Possibly more. Of course, it varies according to what days you are working and what hours you are working.

Q. How do you explain the fact that somebody would call up American Airlines to find out about a non-scheduled carrier?

rier whose name doesn't have the word "American" in it?

A. Are you referring to the—

Q. I mean, you get calls?

A. Yes.

Q. Regarding non-scheduled carriers other than North American?

A. Yes.

Q. I am trying to find out if you have any explanation, from your experience, as to why there would be any such calls?

A. Well, undoubtedly, not knowing the telephone number, I don't know the explanation for it.

Q. Well, now, you have two kinds of calls here that we are talking about. You have calls where North American is involved, and that is a non-scheduled airline. And you have calls where North American Airlines is not involved. But where other non-scheduled airlines are involved.

Why, in your opinion, do you have the calls concerning North American?

A. Is it why do I remember those in particular?

Q. No, what is your explanation as to why these people call American Airlines in regard to North American Airlines?

A. Well, because the name is very similar and through misunderstanding they call us, thinking that, evidently, in some respect, there might be a connection.

363 Direct examination.

By Mr. Stratton:

Q. What is your name and address?

A. Jean Reynolds, American Airlines, LaGuardia Airport.

Q. What is your position with American?

A. Reservation agent.

Q. How long have you been a reservation agent for American?

A. Two years.

Q. Did you hold any other position with American?

A. No.

Q. Have you worked for another airline prior to working with American?

364 A. No.

Q. Turning to page 17 of Exhibit No. AA-5, is that a true and correct copy of a report which you filled in on one of the forms provided by Mr. Thompson?

A. That is right, except that it was a woman I was speaking to.

Q. Did the caller indicate to you why she called you with respect to getting information as to a North American flight grounded in Kansas City?

A. Well, yes, she did call American to find out just what the reason for the flight being grounded in Kansas City, and I did offer to check and I did check, with our flight information department, to make certain as to whether or not it was our flight because I wasn't sure.

So we had no information regarding the flight being grounded in Kansas City. So I wanted to check further for her and I asked if she was sure it was an American Airlines, and she said definitely it was, that her son did call her from Kansas City, so she just couldn't understand why we couldn't give her the information. She did happen to call back a day or so later, and we did discuss it, and I
365 happened to give her my name, and she called me at a later date to tell me that it was North American and that she was sorry to bother us.

Q. Have you received other telephone calls involving confusion between American and North American?

A. Yes, I have received others. I haven't had the time to write them up.

Q. Do you recall the details of any of those telephone calls in particular?

A. Yes, one very much so, a passenger called in and said he was taking such and such a flight out of LaGuardia Airport, could I check and see if it was operating on schedule. I knew that it wasn't an American Airlines' flight, but I

offered to check and see if I could help him out, he was a service man.

I was unable to give him any information whatsoever, so I did happen to ask him if he had a ticket handy, and he said yes, "I do, I will get it for you," and when he got the ticket I said "Could you tell me what airline appears on your ticket?" and he said "Yes, North American," and I said "Well, I am sorry, this is American Airlines," and he said "Are you sure? You are not affiliated with North American?" and I said "No, American is a scheduled airline, and we operate on a very definite schedule."

Q. Do you recall any other calls in particular?

A. Nothing, actually that I could mention really, that I would actually remember.

366 Q. Have you received other calls in addition to the two that you testified about?

A. Oh, yes.

Q. Do you know how often you received such calls?

A. I would say approximately four or five calls a week.

* * * * *

Cross-examination.

By Mr. Maclay:

* * * * *

Q. Well, how would you say the proportion of calls you have involving North American and involving other non-scheduled airlines would compare?

A. We do have quite a few calls from passengers traveling on North American compared to other non-scheduled airlines.

Q. You mean more?

A. Yes.

* * * * *

367 Direct examination.

By Mr. Stratton:

Q. Give your name and address to the reporter.

A. Charles L. Strickler, 100 Park Avenue, New York City.

Q. What is your position with American Airlines?

A. Manager of route development.

374 Q. Mr. Strickler, how were you able to establish the dates on which the two brochures shown in Exhibit AA-9 were distributed?

A. The brochure on page 1 was stapled to a memorandum from American Airlines' district sales manager in Philadelphia, and sent to Mr. Speers. The memorandum was dated March 11, 1952.

The brochure on page 2 was stapled to a memorandum from Mr. King, who is our regional vice-president in
375 the central region, addressed to Mr. Speers, dated February 21, 1951.

Q. Were those two memorandums to which you referred what you might call letters of transmittal accompanying the data? Do you understand my phrase?

A. I understand it, and that is correct.

Q. In the lower righthand corner of the brochure reproduced as Exhibit No. AA-9, page 1, there is the language "Wilton Reynolds revised 6-51." What do you understand that to mean?

A. That appears in the lower lefthand corner.

Q. I am sorry.

A. I understand that to mean the date on which the brochure on page 2 was revised.

Q. And what would you understand that date to be?

A. June of 1951.

Q. At that time—have you examined the operating financial and statistical reports of Twentieth Century, made to the Civil Aeronautics Board, to determine the number of passenger-miles that Twentieth Century had operated as of June, 1951?

A. I have.

Mr. Maclay: Mr. Examiner, I want to object again. This has nothing to do with this case, and obviously American Airlines is trying to get into the matter of the fact that a new carrier, who is operating now, is in some way connected with some prior carrier who had its letter of registration revoked, which I assume will couple up both in the enforcement proceeding and in the non-schedule investigation and it has nothing to do with this case, and I object to the testimony.

Examiner Bryan: I sustain your objection.

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Mr. Stratton:

At this time I would like to offer in evidence Exhibits AA-8, AA-8A, and AA-9.

Mr. Stratton: Was the ruling on the exhibits?

Examiner Bryan: Exhibit AA-8?

Mr. Stratton: AA-8A, and AA-9.

378 Examiner Bryan: They will not be received in evidence.

Mr. Stratton: I ask that they accompany the record as an offer of proof.

Examiner Bryan: They may accompany the record as an offer of proof.

382 Direct examination.

By Mr. Stratton:

Q. Will you give your name and address to the reporter?

A. Jeffery W. Lewis, 710 14th Street, Northwest, Washington, D. C.

Q. What is your position with American Airlines?

A. Manager of the City Ticket Office in Washington.

Q. How long have you held that position?

A. Since 1947.

Q. In connection with your duties as manager of city ticket offices in Washington, do you approve and authorize the payment of bills for items that have been purchased by or for American in Washington?

A. Well, for or by American in the city ticket offices in Washington.

Q. Do you recall having been billed by a radio and
383 television company here last December?

A. Yes, it was around December 16 or 17 we received—actually, not a bill, we received a telephone call. The way it actually happened was that I was out of the office during the morning on either the 16th or 17th, and my secretary received a telephone call from a Rodgers Radio & Television service. Mr. Rodgers was calling, and was quite upset because we had not paid a bill, I believe it was about \$13. His statement was that he felt a large corporation like American Airlines could pay their bills more promptly. She wasn't familiar—

• • • • •
384 By Mr. Stratton:

Q. Go ahead, Mr. Lewis.

A. She was not familiar with American Airlines, particularly the city ticket offices, having requested any services from this particular company, and she advised him that she would check with the manager, and as a result when I returned to the office I called Mr. Rodgers back, and asked him just who in American Airlines had ordered the material, because to my knowledge, none had been furnished to the city ticket offices.

He said he would have to check with his bookkeeper and call me back, which he did in about a half hour, and was very apologetic saying that the call should have been made to North American Airlines.

Q. Is this the only instance in which a trades person in Washington has billed American or attempted to collect from American a bill payable to or due to North American?

A. No, we had one just within the past week, in which we actually received a bill addressed to American Airlines.

Mr. Maclay: I object to this question and answer on the same grounds.

Examiner Bryan: Overruled. The answer may stand.

Mr. Stratton: I would like to have marked for
385 identification, Mr. Examiner, as American's Exhibit AA-13 a bill, bearing the heading "S. W. Rice Company, and an envelope having the return address of S. W. Rice Company, and postmarked "Washington, D. C., March 10, 1953."

Examiner Bryan: It will be so marked.

Q. Mr. Lewis, I now show you a document, and the envelope that have been marked for identification as Exhibit AA-13, and ask you if that is the bill to which you referred?

A. That is the bill.

Q. That is addressed to American Airlines, Inc., at a street address, 718 14th Street, Northwest. Is that the address of American Airlines' office in this city?

A. No, it is not.

Q. Do you know whose address 718 14th Street is?

A. I believe it is North American's address.

Q. Did you investigate to determine whether that bill should have been sent to American or to North American?

A. Yes, we immediately called the S. W. Rice Company, because, again, there is always a possibility that somewhere else in American Airlines somebody could have ordered tailoring changes, and I wouldn't necessarily be familiar with it, so we called the company as a matter of procedure to find out who had ordered the tailoring changes.

386 We were then informed that they were in error and that it should have been sent to North American Airlines.

Cross-examination.

By Mr. Maclay:

Q. You are manager of the city ticket offices?

A. That is correct.

Q. Do the bills and things that have to be paid to the city ticket office for the city ticket office here come to you?

A. That is correct.

Q. Do you have any other specific instances of this kind?

A. Not of this kind, no.

Q. How long have you been here in this city?

A. 1947 as manager of the ticket offices.

Mr. Stratton: At this time I would like to offer in evidence Exhibit AA-13. Copies of it will be prepared and distributed to the parties at a subsequent date.

387 Examiner Bryan: It will be received in evidence with the understanding that two copies will be furnished for the record, and copies served on all parties.

(The docket heretofore marked No. AA-13 was received into evidence.)

388 Direct examination.

By Mr. Stratton:

Q. Will you give your name and address to the reporter, please?

A. Murton Bush, 59 East Monroe Street, Chicago, Ill.

Q. What is your position with American?

A. Reservations manager at Chicago.

Q. How long have you held that position?

A. That particular position since about two years.

Q. How long have you been employed by American?

A. Thirteen years.

Q. Do you sponsor Exhibit No. AA-6?

A. I do.

Q. Does that exhibit consist of true and correct copies of affidavits?

A. Yes, it does.

Q. Were these affidavits prepared under your direction and supervision?

A. They were prepared under my jurisdiction and supervision, yes.

Q. Referring to pages 2 through 7 of Exhibit AA-6, would you please state the circumstances under which those 389 affidavits were prepared?

A. I was asked by the district sales manager at Chicago, Mr. Fox, to have people under my supervision record for me any instances of apparent confusion on a caller's part or on a part of a person coming into the ticket offices, between the name of American Airlines and North American Airlines.

This I carried to my supervisors, much the same way, asking them to go directly to the reservation agents and ticket agents to prepare for us, just notes on any such confusion.

Q. Were those notes subsequently reduced to affidavit form?

A. Yes, they were.

Q. Now, pages 2 through 7, were those to cover instances occurring within a specific period?

A. Yes, the survey, on those pages, was a three-day survey.

Q. Covering October 23, 24, and 25, of 1952? Is that correct?

A. Yes.

Q. Referring to the remaining pages of the exhibit, starting with page 8, under what circumstances were those affidavits prepared?

A. We made a later survey, and I believe that was for roughly a two-week period, that we actually recorded them and asked the people to submit their comments on notes.

390 Q. Did that cover the period November 3 through November 17, 1952, as set forth in the narrative on the first page of Exhibit AA-6?

A. Yes, that is correct.

.

393 Mr. Stratton: Mr. Examiner, during the recess American Airlines agreed to furnish for the record copies in color of pages 8 and 9 and 12 of Exhibit No. AA-1. We also agreed that we will furnish a description of the colors used in the billboards, the outdoor billboards, reproduced at page 13.

We have available for inspection, but cannot furnish for permanent including in the record, the original of pages 14 and 15, which show that that is a black-and-white ad in which a bluish-greenish color was used as the background of the brochure.

We also entered into a stipulation covering Exhibit AA-3, Mr. Examiner. On that basis I would like to now move the introduction in evidence of Exhibits AA-1, AA-2, and AA-3.

Mr. Maclay : To AA-3 there is no objection, Mr. Examiner. To AA-1 there is no objection, the way it has been worked out. To Exhibit AA-2 there is no objection.

Examiner Bryan : Exhibits AA-1, AA-2 will be received in evidence, subject to the remarks made by counsel pertaining to the exhibits, with the understanding that copies have been supplied to the parties and two copies for the official dockets, and it is my understanding that Exhibit

394 AA-3 is included in the stipulation between the parties, which will be submitted for the record before the close of the hearing.

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400 Mr. Stratton: * * * And at this time I would like to read into the record the description of the coloring on the outdoor billboards reproduced as Exhibit AA-1, page 13.

The Los Angeles billboard, appearing as the upper picture reproduced on that page, has at the top the letters "Fly American."

401 These are red-brown letters, with orange neon

tubing around the letters. The letters are 72 inches in height. The body of the billboard measures 21 by 36 feet. The background is white. The lettering "To New York" is in a bright red. The letters "Via DC-6 air tourist service" is blue-green. The legend "\$99 plus tax" is blue-green.

With respect to the Dallas billboard reproduced as the lower of the two pictures on that page, the background of that billboard is "graded blue."

The legend "Finest to Chicago" is white. The legend "American" is lemon-yellow. The legend "Two non-stop DC-6 flagships," and so forth, is in a light blue. The dimension of the copy area on the billboard is 17 by 53 feet.

Mr. Maclay : I have no objection.

416-417 Examiner Bryan: * * * So I guess it is the best evidence that we have available and it will be received in evidence for what it is worth. That is American Airlines' Exhibit 4, 5, and 6.

EARNEST LEGENDRE, was called as a witness for and on behalf of North American Airlines, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Maclay:

Q. Will you state your name?

A. Earnest Legendre.

418 Q. And your position with North American Airlines?

A. Counter agent, in Burbank.

Q. How long have you been with North American Airlines Agency Corporation?

A. Two years in April.

Q. Do you sell tickets for North American Airlines?

A. Yes, sir I do.

Q. Do you ever have any persons make requests of you for issuance of tickets on American Airlines?

A. I have had one occasion; very lately.

Q. Could you tell us about it?

A. This gentleman came up to the counter to pick up a reservation. The normal procedure is to call our
419 space control and confirm the space before we sell the ticket. Now, before I had a chance to do that he told me the departure was 11:55, and I immediately assumed that it must be American Airlines.

Q. Does American have a departure at 11:55 from Burbank?

A. To my knowledge, yes, not at Burbank, no, but at Inglewood.

Q. Inglewood?

A. Yes.

Q. Where is that?

A. The other side of town.

Q. In Los Angeles?

A. Yes.

420 Q. Do you have inquiries at your counter as to where other ticket counters are located in the terminal?

A. Every day, yes.

Q. At what times are North American Airlines' flights made up? What time do they leave Burbank?

A. 9:30 in the evening.

Q. What time do your flights come in?

A. Usually about nine in the morning.

Q. Have you had instances where people come to your counter and ask for information regarding an American Airlines' flight?

A. Only in the case of weather operation, whereby Los Angeles Airport would be closed, and it is necessary for all carriers to land at Burbank.

Q. In that situation, do you have people come to your counter and request information on American Airlines' flights?

A. Only if they land at the south concourse. We are the first counter at the entrance there.

Q. Do you have people come to your counter and ask you to give them information with respect to the flights of other carriers at Burbank?

A. Do you mean in the case of weather operation, or normal operation?

Q. Any time?

A. Yes.

421 Q. What carriers have been involved in questions that have been asked you by members of the public with respect to information concerning flights?

A. All of them. Not concerning flights, mainly, but the location of their counters.

Q. Is there any particular carrier with respect to which you receive more questions than others?

A. I might say United.

Q. Do you have any explanation as to why you receive more inquiries with respect to United?

A. Well, they seem to have more frequent flights than anyone else, out of Burbank.

Q. To your knowledge, who has the most flights in and out of Burbank, daily?

A. United.

Q. Who is second, do you know?

A. Well, that would depend if it was transcontinentally or local.

Q. Well, let's take transcontinentally first.

A. Until the first of March, we had more frequent service transcontinentally.

Q. Do you mean second to United? Do you mean they had the most, and you had the next most?

A. We had the most.

Q. You had the most?

422

A. Yes.

424 Q. Are there frequent instances where someone comes to your counter, and they are meeting passengers, and they don't have the full information as to the flight number or the carrier on which the person is supposed to be coming in?

A. That is very frequent, daily.

Q. Do people come to your counter and say "So and so is coming in on Flight 602," or some such number, and that is all the information they have?

A. That is right.

Q. Are there instances where someone comes to your counter and says "I am meeting someone who is coming in at 9:30, and I don't know what carrier he is on."

A. That is very frequently, yes.

427 Q. If the person would call the switchboard—if you know the answer to this from your experience there—if the person would call the terminal switchboard and simply give a flight time, do you know how the switchboard would handle that?

A. Well, she will call the counter and find out.

Q. Whose counter?

A. All the counters, if she has to. Now, I have not visited the switchboard, I never was in there, but I assume, or I might assume, that they have information at the switchboard there. On the other hand, it may be that they are too busy, and they will refer them immediately to the air line that is asked for.

Q. Do you get frequent calls over the terminal switchboard, which really should have been referred to other carriers?

A. Not frequently, no.

Q. Do you get such calls over your own private telephone line? Do you get many of those?

A. No, we wouldn't get them over our own line, that is to say, not at the counter phone.

Q. Do you get calls from people who want to purchase transportation to points that you don't serve?

A. Yes, sir, we do.

Q. Do you get a great many of those, or a few?

A. A good number.

428 Q. Is North Star the same as or associated with, or is tied up in your mind at all with Air America?

A. Yes, I know that they are.

Q. Do they do advertising under the name "Air America"?

429 A. Yes, lately. I don't know when I have last heard North Star on the radio, but I have heard Air America.

Q. Does Skycoach advertise?

A. Yes, sir, as Skycoach. Skycoach advertises as Skycoach Agency.

Q. Do you know whether there are any independent agencies other than Skycoach, or the ones you mentioned, who furnish free ticket deliveries?

A. Yes, sir.

Q. Do they advertise that they do so?

A. In the newspapers, yes.

Q. Are there quite a few of those, do you know?

A. Not too many, but there are some.

Q. Do you know whether there are air carriers other than North American Airlines, and whether there are ticket agencies other than North American Agency Corporation, which advertise fares to Chicago in the newspapers and on the radio which are less than American Airlines' fares?

A. Yes. \$80 to New York and \$70 to Chicago.

Q. Are there several such agencies and carriers, which advertise those fares?

A. I would say all independent carriers and their agents, and sub-agencies.

Q. Do you happen to know the names of any of them that do advertise lower fares than American Airlines' fares?

430 A. Carriers or the agents?

Q. Either or both?

A. Well, I know North Star does, or Air America. Also Skycoach, Inc. And the agents, I have never heard them advertise on the radio.

Q. But they do in the newspapers?

A. They do in the newspapers.

Q. Do you have a "fly now and pay later" plan?

A. The Los Angeles office does, yes.

Q. Do you know whether any other carriers or agencies advertise a "fly now, Pay later" plan?

A: I am sure North Star does. I wouldn't swear to it, but I feel almost confident.

Q: Do you mean that North Star does or that others do?

A: That North Star does.

431 Q: Do you have any knowledge of an A. F. L. Buyers' League scrip book? Do you recognize these scrip books for transportation, or whatever it is?

A: Well, I haven't seen a scrip book.

Q: Do you recognize something having to do with the A. F. L., cards or something like that, for some purpose in buying tickets?

A: There is the membership card. I have seen it on a few occasions.

Q: Do you know whether any other carrier or carriers or ticket agencies recognize that similarly?

432 A: Well, we borrowed the idea from North Star.

Q: They originated the idea?

A: That is right. I won't say they originated the idea, but they had it before we did.

433 Q: Will you refer to American's Exhibit AA-4, page 22? In that exhibit, the person signing that report is an American Airlines' ticket agent, and in that report she says that the person who came to her counter said "I was told downtown to check with you about Flight 101 to New York, handing me a flight envelope, of North American."

Do you have similar instances to that, where the person will come to your counter and tell you that they are checking on the flight, and give you a number of a flight of some other carrier—that is other than North American, and other than American—and hand you a flight envelope, for example, TWA or United or Skycoach, or some other carrier?

A: That is just about a daily occurrence.

Q: Can you state whether there are more or less of

those for any certain carrier, like you have more of
434 United or more of TWA or more of Skycoach, or
more of American? Can you give us some idea of
how they break down?

A. We have quite a few of North Star. Again I will say
that the independent carriers are the only ones going east
out of Burbank at that time, with the exception of United.
They leave at six o'clock, if I understand correctly. So it
would be hardly one of the major air lines.

Quite a few check in for a flight to Seattle or San Fran-
cisco, and so on and so forth, belonging to other air lines.

Q. And they come to your counter?

A. Yes, sir.

Q. ~~What carriers?~~

A. All of them.

Q. You mean scheduled and non-scheduled.

A. Yes, sir.

Q. And they come there, to North American Airlines'
counter?

A. That is right.

Q. How long have you been working at Lockheed Termi-
nal for North American Agency, Inc.?

A. Two years.

437 Q. Do you know whether North American Airlines,
or North American Agency Corporation, or North
American Aircoach Systems, has an office in Santa Monica,
California?

A. I don't know of any there, no. I am sure we don't.

Q. Do you know whether there are other ticket agencies,
with office at Santa Monica?

438 A. I am sure there is.

Cross examination.

By Mr. Stratton:

457

Q. When a passenger comes up to you and asks "When do you have a flight to Chicago" do you ever ask him what airline he wants?

A. He will tell me, because if he is looking for an airline, I would say, 99 out of a hundred, I have a reservation, which is very important to him.

Q. I am not talking about a customer who comes in and does not have a reservation.

A. I won't ask him that.

Q. So that, you would have no way of determining whether he thought he was talking to American Airlines or to North American Airlines, or to any other airline.
458 if he started the conversation by asking the question I just asked you?

A. Well, those people coming to the airport for space don't necessarily come first to North American. They will shop around. I have seen them do it dozens of times. It so happens that I feel we have better service, in the way of coach business, out of Burbank, and that is quite a selling point.

463 Q. Did I understand you to say that North American does not have a ticket office in Santa Monica?

A. That is right.

Q. Then why does the March, 1953, Santa Monica telephone directory contain a quarter-page advertisement for a North American Airlines ticket office located at 215 Wilshire Boulevard, in Santa Monica, with the telephone
464 number, Exbrook 36791?

A. That no doubt was put out by a sub-agency; without question it was.

Q. Are you familiar with North American's telephone book advertising in Los Angeles?

A. No, I am not.

Q. Have you ever looked in the yellow pages of the Los Angeles telephone book?

A. I haven't any reasons to, no, except for a cab, maybe.

Mr. Stratton: I would like to have marked for identification as American's Exhibit AA-15, page 62 of the Los

Angeles, classified section, yellow pages, for August, 1952, bearing two ads of North American Airlines.

Examiner Bryan: It will be marked.

(The document referred to was marked American Airlines Exhibit AA-15 for identification.)

By Mr. Stratton:

Q. I now show you that, Mr. Witness, and ask you if you have ever seen those ads of North American Airlines before?

A. I have seen the composition; but not necessary the phone numbers.

Q. Would you say that those are advertisements of North American Airlines or advertisements put out by some sub-agent?

A. I am not familiar with that Gladstone number.

Q. If I were to tell you that the Santa Monica phone book contains, for March, 1953, that is, contains, 465 an ad similar in format to that, but giving an address and telephone number in Santa Monica, and saying, on a line near the bottom, "North American Aircoach Systems, Inc.," would you regard that as an ad of North American Airlines or as an ad put out by some sub-agent of North American Airlines?

A. In Santa Monica I would say it is a sub-agent, probably with permission to use our name. We don't have an office there.

Q. But there is someone, then, in Santa Monica, who advertises using North American Airlines' ad, in the same form as used in the Los Angeles phone book, but that must be a sub-agent, is that your testimony?

A. Well, I won't put it that way. Now, since North American is a good selling point they could feature North American and also they include some place on there that they sell on all air lines. That is why I say it is a sub-agent. They are all independents. But since North American is the best selling, naturally, they want to attract the passenger's attention.

Q. Do you think a passenger that went to that office would think it was an office of North American Airlines?

A. That depends on how the office has been decorated. I don't know.

Q. Do you think a passenger who read that advertisement in the phone book and then called on the phone, would 466 think he was talking to an office of North American Airlines?

A. He would know he is talking to a representative of North American, not necessarily an office, because if that agent in Santa Monica wants to feature, or dwell on North American, rather than the others, well, all good and well. It is a source of passengers.

Q. Is it customary for North American's sub-agents to advertise in the name "North American Airlines" with an advertisement that also says "North American Aircoach System, Inc.," on it?

A. That I wouldn't know, since I don't have that knowledge. I wouldn't be able to answer it.

Mr. Stratton: Mr. Examiner, copies of the Santa Monica telephone directory for March, 1953, and March, 1953, are available in the Department of Commerce library in this building, on the seventh floor, where I examined them during the luncheon recess, and found the advertisement to which I have referred, and a telephone book listing in the white or alphabetical section of the phone book for North American Airlines, containing the same address, and the same telephone number to which I referred previously.

The librarian will not, unfortunately, permit us to remove those books from the library for production at this hearing. I would like to request a five-minute recess so that the 467 Examiner can examine the books in the library, if he so desires, and also I would like permission to reproduce the advertisements to which I refer, in the Santa Monica telephone directory, as supplemental exhibits to be distributed with our other additional material after the end of the proceeding.

Examiner Bryan: You are referring to your exhibit which has been marked AA-15?

Mr. Stratton: No, this is a Los Angeles Advertisement. I am referring to the Santa Monica advertisement, which appears in the Santa Monica telephone directory, to which I have referred. I would like to reproduce that.

Examiner Bryan: You can reproduce that and submit it as a late exhibit.

Mr. Stratton: All right.

Examiner Bryan: That will be marked Exhibit AA-16 and will be due within ten days after the close of the hearing.

* * * * *

472 Direct examination.

By Mr. Maclay:

Q. Will you state your name, please?

A. Joseph Cassidy.

Q. By whom are you employed?

A. North American Airlines Agency Corporation.

Q. How long have you been employed by them?

A. Approximately two years and nine months.

Q. Where are you employed now?

A. 718—14th Street, Northwest, Washington, D. C.

Q. How long have you been employed in Washington?

A. Since January 1st.

Q. Prior to that time where were you employed?

A. I was employed at 726 Broad Street, in Newark, New Jersey.

Q. How long were you employed there?

A. Eighteen months.

Q. Back to what date? Approximately?

A. From June, 1951, to December, 1952.

Q. Prior to that time, where were you employed?

A. North American Airlines Agency Corporation, New York City, 152 West 42nd Street.

* * * * *

476 Q. Do you know on this particular record whether that particular one is being used now?

A. No, I don't, but I can say this: that that same record—for instance, we started in Washington, D. C., we would take the same record and all we would dub in would be the new phone number and the new price. So I would say the same record would be used all over at any time.

* * * * *

477 Examiner Bryan: The record will show that counsel for North American will furnish the date on which the recordings were made. And that will be included in Exhibit NAA-17, these recordings, and NAA-17 will be received in evidence, with the same ruling as before, to be withdrawn and with the understanding that they will be withdrawn at any time that the Board may request.

* * * * *

478 Q. Do you have any persons come into your office and ask for information on American Airlines, or other airlines?

A. Yes.

Q. Do you ever have people come into your office and request refunds on tickets, and hand you a ticket that is not a ticket on one of the carriers for whom you have sold the ticket?

A. No.

Q. Did you ever have anyone come into your office and request information with respect to flights of other air carriers?

A. Yes.

Q. Do they follow any pattern? Are there more of any particular carrier than another?

A. No more than any other. They run just about the same.

Q. Do you have, for example, requests for information with respect to TWA, North Star, American Airlines?

A. Yes.

Q. And others similarly?

A. Yes.

Q. When you have inquiries, generally, about air transportation, and someone wants to go to a point that is not served by one of the carriers that you represent, how do you handle that sort of a case?

479 A. I look up the airline guide, and if there is more than one airline going to that particular point, I name the airlines involved. If there is only one, I direct the request to that address or give him the phone number of that particular airline.

Q. Do you sell tickets on quite a few different carriers?

A. Independent carriers, yes, sir.

Q. If you have someone come into your office, here in Washington, who wants to go from Washington to the West Coast, do any of the carriers that you represent, independent carriers, operate from here to the West Coast?

A. Yes, they do.

Q. Do you sell transportation from here to the West Coast?

A. Yes.

Q. Direct?

A. Yes.

Q. Do you ever sell transportation from here to the West Coast via New York?

A. Yes.

Q. How do you handle that sort of a situation?

A. I send them to New York via Eastern Airlines.

Q. How do you do that? Do you get them a ticket on Eastern?

A. Yes, I already have a stock of thirty Eastern Airline tickets which I purchase in advance, open dates.
480 I usually put them on a flight leaving at five p. m., arriving at New York at around 6:10.

Q. Do you also put some of your passengers on American Airlines to New York?

A. Yes, I do, with Eastern Airline tickets.

Q. That is, you use the Eastern stock?

A. That is right.

Q. Do you have instances where people come to your ticket office—and each time I am referring to all three of the places where you have worked—do you have instances where people come in and they are after generally information about air transportation?

A. Yes, sir.

Q. Do you have instances where you conclude, from what is said by a person coming into your office, instances where you conclude that they are actually confused between the name North American and the name American?

The Witness: No. People who have come in have been confused—people who were booked to fly on TWA or on Canal, or on a lot of other airlines, including American, too, but never one that said that the name has confused them.

482 A. Yes. TWA advertises lower than American. \$98. Skycoach, North Star, Peninsular.

Q. Are there any other companies that you know of that used radio advertising in advertising Aircoach operations?

A. North Star, Skycoach, Eastern Airlines. That is about all I remember.

Q. Do you know of any other carriers or agencies that used television as a vehicle for advertising aircoach operations?

A. Capital uses it. Pan American—they have no aircoach. They go overseas.

Q. Did you say Pan American has no aircoach overseas?

A. No, I don't think they have aircoach. Well, they are overseas anyway, not domestic.

Q. Do you know whether they do any advertising on TV or radio?

A. They are on TV, but I don't know what the ad consists of. I just saw it once.

Q. Do you ever have calls come into your office from people inquiring as to why flights coming in, either here or at New York, are late?

A. Yes.

Q. Do you have calls why they don't know which carrier the flight is on, that they are inquiring about, but they are inquiring, without knowing the name of the carrier, why a certain flight is late, for example, why the 9:30 flight is late, or something like that?

483

A. Yes, rarely, but I do.

Q. Are those instances confined to flights that actually are American Airlines', or do they just have a general pattern of any airline?

A. Any airline.

Q. Do you know the flight numbers of North American Airlines' flights?

A. Yes.

Q. What are those? The transcontinental flights, particularly.

A. 101, 102, 103, 201, 202, 203, and extra sections, 204, 205.

Q. What are the flight numbers; Miami flights?

A. 301, southbound; 401 northbound.

Q. Do you have flight numbers for points that you serve on a less frequent basis than those points are served?

A. No, those are the points that we serve. For instance, Flight 201 will set down in Chicago, and leave from Chicago still as Flight 201.

517 Direct examination.

By Mr. MacLay:

Q. Will you state your name, please?

A. Maureen Porter.

Q. By whom are you employed?

A. North American Airlines Agency Corporation.

Q. Where?

A. 718 Fourteenth Street, Northwest, Washington, D. C.

Q. How long have you been employed there?

A. In Washington, since January 12. Previous to that, in the Newark office.

Q. Of North American Airlines Agency Corporation?

A. That is right.

Q. How long were you there?

A. Approximately two years.

Q. What is the position you hold?

A. Reservationist.

518 Q. Do you have instances where people come into your office and appear to you to be confused as to what office they are in?

A. There is only one particular instance, and that is

since I have been in the Washington area, where one passenger did come into the office holding an American Airlines ticket:

Q. When was that?

A. About two weeks ago.

Q. And what happened?

A. Well, he did have some luggage with him, and he had just stepped out of a cab, and straight into the store, and he said "I believe I am leaving on such and such a flight," and mentioned the number and he had the ticket in his hand. And I said, "May I see the ticket," and I looked and I said "no, that is an American Airlines flight, and their store is right down the street," and I directed him where to go. That was all.

Q. Where is the American Airlines office, from your office?

A. I believe it is three stores down.

519 Q. Do you have instances where people call you and want general information on air transportation, but they don't know what carrier they are after? They want to go to a certain place, for example?

A. Yes.

Q. And if none of the air lines for which you regularly sell transportation go to those points, what do you tell them?

A. We will direct them to the air line that can service them.

Q. Do you have an official air line guide in your office?

A. Yes, we refer to that, and then mention whichever air lines or air line goes to the point to which they want to go.

Q. Did you ever have an instance where a person who came into your office with a ticket on some other air line, or a ticket on some air line other than any of the ones for which you normally sell, or a ticket which you did not sell, and ask you for a refund on it?

A. Yes.

Q. Will you tell me about any such examples. How many of them have there been? Very many?

A. No, very few and far between;

520 Q. Could you give me an example of that?

A. It could have been where they would be from other carriers, just aircoach, without stating any particular name or anything like that, and just then simply having an air coach flight—it could be Skycoach, North Star, Peninsular, any one of those carriers, and I will direct them to the office carried on the ticket.

Q. You will find you will get a lot of inquiries having to do with aircoach matters?

A. Usually, yes.

EXHIBIT No. AA1

C. A. B.

Docket Nos. 5774, 5928

Page 1 of 16 Pages

American Airlines, Inc. Advertises American

For more than 20 years, our name has been American. Since 1934, it is American Airlines, Inc. For 4 years before that, it was American Airways, Inc.

In advertising, in publicity, in selling we emphasize the names American and American Airlines. Our purpose is to create in the public mind an identity between the name American and our air transportation services—i. e. to build into the name American what in the law of trade names and trademarks is known as “distinctiveness” or “secondary meaning”.

Such public identification of an airline's name is essential in the highly competitive airline industry.

The following pages include representative samples of the advertising and publicity designed to make the names American and American Airlines distinctive—to build the good will that brings us traffic—first riders, first shippers, repeaters—who know American as “*America's Leading Airline*” and who agree with us:

“Better by Air—

“Best by American”.

Typical newspaper advertising appears at pages 3 through 5 of the Exhibit. Use of the name American alone to identify the services of American Airlines, Inc., is illustrated by (a) the company's newspaper "billboard" advertising campaign which has run continuously since April, 1949 and (b) the "American's Convairs and Coming" campaign of 1948. At the present time, advertisements of the "billboard" type feature the name American alone and appear in 142 newspapers throughout the country with a combined circulation of approximately 28,000,000. On the average, 251 "billboard" ads appear each week. The company has spent in excess of \$2,250,000 for this type of advertisement since the start of the campaign in the spring of 1949.

Magazine advertisements, typical samples of which appear on pages 6 through 9 of the Exhibit, have cost American Airlines approximately \$3,800,000 during the years 1948 through 1952. During these years, many of the company's advertisements appearing in national magazines have featured the name American with an emphasis similar to that employed in the newspaper advertisements.

Company display advertising likewise highlight the name American in city and airport ticket offices and other public places throughout the country. Typical samples are reproduced on pages 10 through 11 of the Exhibit.

Brochures issued by American Airlines similarly frequently feature the name American. Typical samples are reproduced on page 12.

532 *Outdoor billboards*, like the newspaper "billboard" ads, frequently use only the name American in such slogans as "Fly American". Pictures of current outdoor billboards in Los Angeles and Dallas are reproduced on page 13 of the Exhibit. The Dallas billboard has been in use since Dec. 30, 1950 at an average monthly cost of \$185. The Los Angeles billboard is one of two which has been used since May 23, 1950 at an average monthly cost of \$1,500 each.

Such emphasis on the name American has been a company practice for many years. Thus, in 1940, the company produced a sales movie, *The American Way*, which was shown

to hundreds of groups throughout the country. A copy of a brochure used in connection with The American Way is reproduced on pages 14 and 15 of the Exhibit. A photograph of an American Airlines aircraft flying over New York City *circa* 1937-1938 is reproduced at page 16 of the Exhibit with the name American prominently lettered on the fuselage.

Note:

"Pages 122-140 on
next 2 cards"

554 C. A. B.
Docket Nos. 5774, 5928

Exhibit No. AA-2
Page 6 of 12-Pages

Copy

AETNA LIFE INSURANCE COMPANY
Hartford 15, Connecticut
February 26, 1953

R. E. S. Deichler,
Vice President—Sales

American Airlines
100 Park Avenue
New York 17, N. Y.

Dear Mr. Deichler:

Thank you for your February letter enclosing the booklet of listed hotels as well as *American's* Progress Report for 1952.

I have found my air travel card to be very helpful upon several occasions in cashing checks, not only in hotels which are listed in your booklet but in some others as well.

I recently received the credentials, together with membership card, etc., into the 100,000 Miles Club of United Air Lines. You may be interested in learning that a good part of the approximate 125,000 miles I have flown as a passenger on airlines has been with *American*. As a matter of fact, my first flight of any significance was from El Paso to Nashville aboard an *American* sleeper plane in May of 1939.

It is my understanding that you have an honorary organization in *American* known as the Admiral's Club. I would appreciate any information you could give me regarding the qualifications for membership in such an organization.

Sincerely yours, (S.) William H. Holmes, Pension
Trust Supervisor.

emb.

SAMPLE NEWSPAPER ADVERTISING

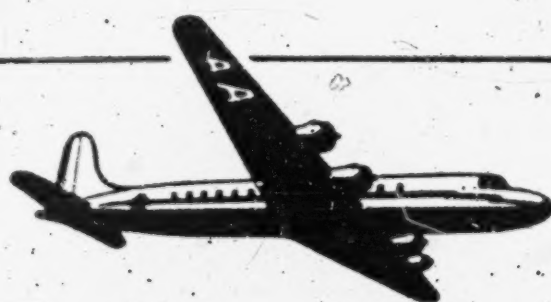


SAMPLE NEWSPAPER ADVERTISING



SAMPLE NEWSPAPER ADVERTISING

American Airlines' low-fare policy is aimed at bringing to more and more people the advantages that only air transportation makes possible. Low fares now apply to travel on American's great new postwar fleet of five-mile-a-minute DC-6 and Convair Flagships, which enable more people to go more places, more often — in greater comfort. This is continuance of American's leadership in bringing to the American public the finest air transportation facilities, the most complete and courteous service — at a cost within easy reach of the average American family.



**Only American offers
the finest air transportation
and this lowest-fare policy:**

- 1. Half fare** for your wife... half fare for your children (21 and under)... when you buy one regular-fare ticket (Mondays, Tuesdays, Wednesdays).
- 2. No extra fare** for luxurious DC-6 service.
- 3. Extra 5% discount** on all regular-fare round trips.

Call American Airlines or your Travel Agent

AMERICAN AIRLINES

Ad 55747—1000 lines (5 cols. x 200 lines).
Newspapers—September 1948

SAMPLE MAGAZINE ADVERTISING



let American plan your transportation!



Enjoy special fare-savings and low-cost tours

LET AMERICAN's experts help make your convention an even bigger success by planning your transportation. In addition, American offers fare savings and low cost Flagship Tours that enable you to tie in a vacation for many dollars less than the usual cost. Or, if you choose, you can visit some friends on the way at no extra fare, thanks to special stop-over and alternate route privileges. So plan to go by Flagship now. You'll arrive sooner, stay longer and enjoy air travel at its finest!

- The Family $\frac{1}{2}$ Fare Plan
- \$59 Sidetrip to Mexico
- Low-cost Flagship Tours
- Group leader of 15 visits Mexico free.

For details see your nearest American Airlines ticket office or write to American Airlines, Inc.

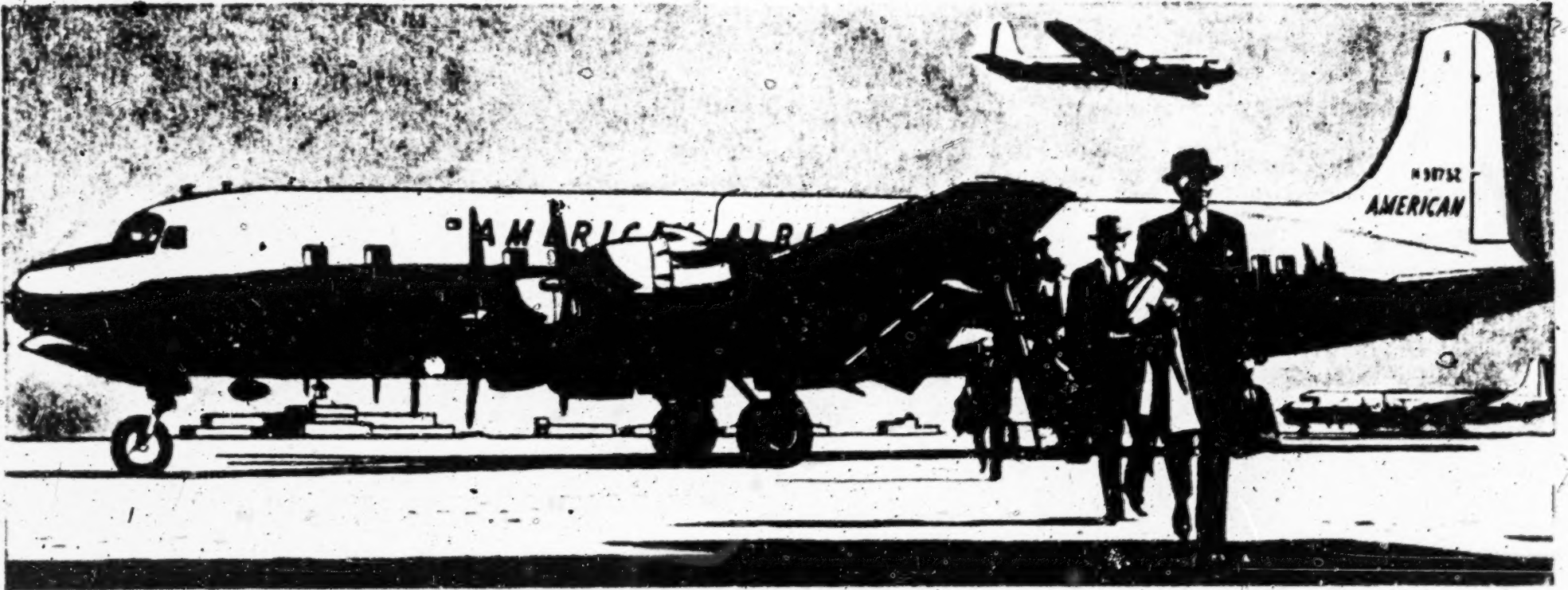
CONVENTION SALES MGR.

100 Park Ave., New York City, N.Y.

AMERICA'S LEADING AIRLINE—

AMERICAN AIRLINES INC.

SAMPLE MAGAZINE ADVERTISING



ARRIVE

BY

AMERICAN

Nowadays with highways jammed and city streets clogged with traffic, it makes more sense than ever to use the Plane-Auto plan instead of driving your own car on business or vacation trips of 100 miles or more.

Why tire yourself needlessly when American whisks you over the long miles in the pleasant comfort of a Flagship seat and makes certain that you'll arrive rested and refreshed.



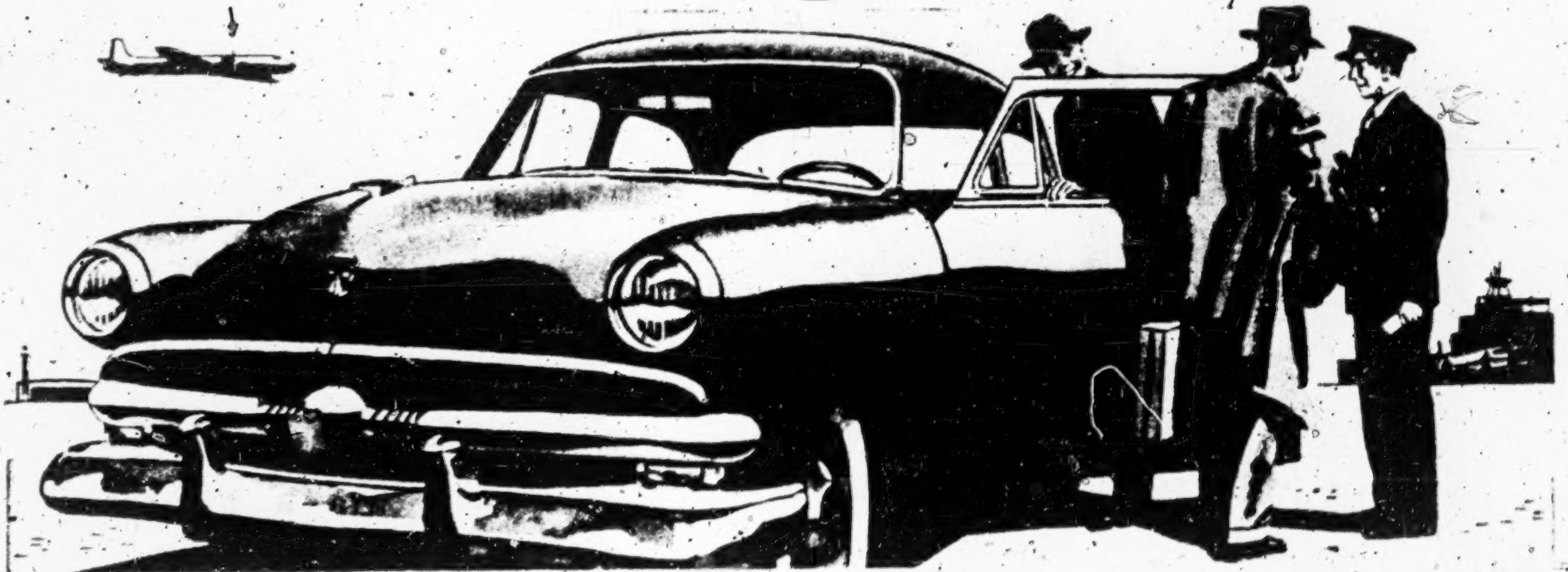
DRIVE

BY

AVIS

Immediately after your Flagship lands, you're on your way to your appointment behind the wheel of an Avis Rent-A-Car. All Avis cars are new models and rates include gas, oil, insurance and maintenance.

This modern travel combination is available in 44 of American Airlines' cities and over 200 throughout the world. You can order your Avis Rent-A-Car when you make your Flagship reservation. So arrive by American—drive by Avis!



AMERICAN AIRLINES INC. AND
America's Leading Airline

AVIS RENT-A-CAR SYSTEM
A LIMITED NUMBER OF AVIS RENT-A-CAR FRANCHISES STILL AVAILABLE
Write: 10734 Fulbright Ave., Detroit 4, Mich.

Reprint of black and white advertisement appearing in Time, January 19, 1953

SAMPLE MAGAZINE ADVERTISING

IN 1950 **AMERICAN** *sets the pace-with the* **FLAGSHIP FLEET!**



AXA *The largest and most modern fleet of transport aircraft in the world today!*

IN 1950—THE FLEET OF THE YEAR IS THE FLAGSHIP FLEET! For American Airlines, and only American, can offer such a vast fleet of aircraft, such a completely modern fleet in every respect. And such a versatile fleet as well—for both the DC-6

and the Conqair are designed for the type of route they serve. So, whether you're traveling coast to coast, or to a nearby city, make sure you go by American Airlines Flagship and enjoy air travel at its best on every trip.

THE DC-6 FLAGSHIP

The acknowledged leader in transcontinental travel—first choice of passengers from coast to coast.

THE CONQAIR FLAGSHIP

Especially designed for inter-city travel—especially popular for its comfort and speed.

AMERICAN AIRLINES INC.

AMERICA'S LEADING AIRLINE

Ad 46578—4 color Center Spread
Saturday Evening Post—January 11, 1950
Life—January 16, 1950 (1 Facing Pages—bleed in gutter)
Collier's (Photo)—February 18, 1950

Let AMERICAN bring you — have HERTZ meet you



Use the PLANE-AUTO PLAN
on Business and Vacation Trips!

AVOID THE STRAIN OF LONG DRIVES
OVER JAMMED HIGHWAYS

Next time you plan to take a trip there's no need to tire yourself out with tedious driving over clogged highways and through traffic filled cities. There's an easy way to have a car at your disposal — the Plane Auto Plan.

When you use the Plane Auto Plan, you cover the long miles in the restful comfort of a Flagship. And you have a new Hertz Drive-It-Yourself Car at your personal service when you arrive. So, if you want to cover ground, the way to do it is by leaving your car at home and using the Plane Auto Plan.

This sensible travel combination is as easy to arrange as it is convenient to use. You order your car from Hertz at the same time and place you make your Flagship reservation. There's no delay at the airport. Your car will be waiting for you.

Here's the perfect answer to business and vacation travel problems. American Airlines and the Hertz System stand ready to serve you together in 62 Flagship cities. And, of course, there's no finer air travel than Flagship travel — no more dependable rental cars than Hertz Drive-It-Yourself.

AMERICAN AIRLINES INC.



AND



HERTZ Drive-It-Yourself SYSTEM

| | |
|-------------------------|-----------------------|
| CIVIL AERONAUTICS BOARD | |
| 5774 | AA-1 |
| Doc No. 5728 | Exhibit No. 2-9 |
| Date | 3/23/53 |
| Applicant's | Intervenor's Reporter |

Reprint of color spread advertisement appearing in Saturday Evening Post, November 15, 1952

128

540

540

MICROCARD

TRADE MARK



5320



55

SAMPLE MAGAZINE ADVERTISING

Let AMERICAN bring you - have HERTZ meet you



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on Business and Vacation Trips!

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AMERICAN AIRLINES INC.
AND
HERTZ Drive-It-Yourself SYSTEM

SAMPLE DISPLAY ADVERTISING



SAMPLE BROCHURE ADVERTISING

Better by Air ...
Best by American!

With the fleet new Convair—newest Flagship aloft,
American Airlines brings to Air-Age travelers the
finest standards yet in the always-fine standard
American service. Thanks to astonishing efficiency
of operation, the Five-Mile-A-Minute speed and
the postwar comfort of the Convair Flagship are
yours at regular low American Airlines rates.



AMERICAN AIRLINES

Printed in U.S.A.

**WHENEVER YOU'RE
HEADING WEST ...**

**GO
AMERICAN**

**14 ROUTINGS
FROM WASHINGTON**

OUTDOOR BILLBOARD ADVERTISING



Displayed In Los Angeles Since May 23, 1950



Displayed In Dallas Since December 30, 1950

"THE AMERICAN WAY" ADVERTISING

WHY AMERICAN HAS PRODUCED THE SOUND MOTION PICTURE

Thousands of people will see the sound moving picture "THE AMERICAN WAY." For these countless questions and misunderstandings will be answered. Men and women who have flown a little, if at all, will be shown how efficient and dependably a modern air line operates, why this form of travel has become established acceptance.

It is only logical that American Airlines should sponsor this effort to acquaint more people with the advantages of flying. American Airlines has built a standard of service based on an outstanding performance record. This air line carries more passengers than any other, more than 50 per cent of all U. S. air travelers, and flies over one hundred and twenty million passenger-miles yearly. While American pioneered in the air transportation business, and has now grown to be the country's largest line, we are still pioneering in the advancement of air travel — and will continue to do so to the end that more and more people may know the joy of flying.

MAKE BOOKING RESERVATIONS FOR

"THE AMERICAN WAY"

Early

In offering "The American Way" for showing, we only request that — due to demand — reservations be made early. Upon request, we will gladly furnish complete information on possible showing dates, and will cooperate in arranging every detail connected with its presentation.

FOR AIR TRAVEL INFORMATION AND
RESERVATIONS, CONSULT YOUR
TRAVEL AGENT OR AMERICAN AIRLINES, INC.

MODERN AIR TRANSPORTATION

in Action



EXCERPTS FROM THE
SOUND MOTION PICTURE

"THE
AMERICAN
WAY"



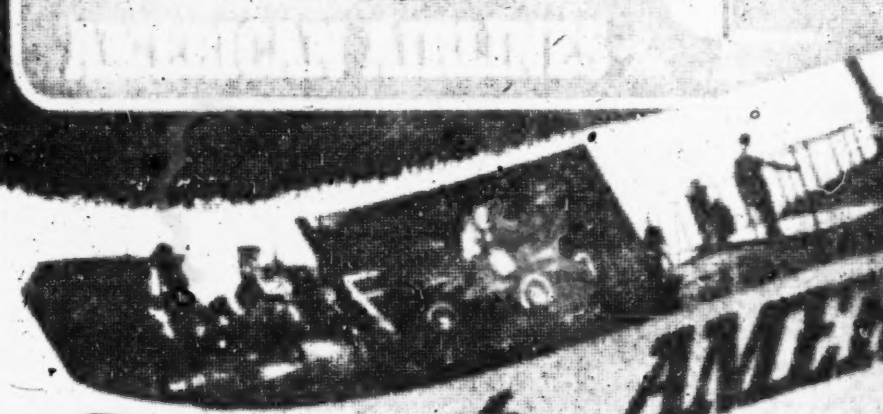
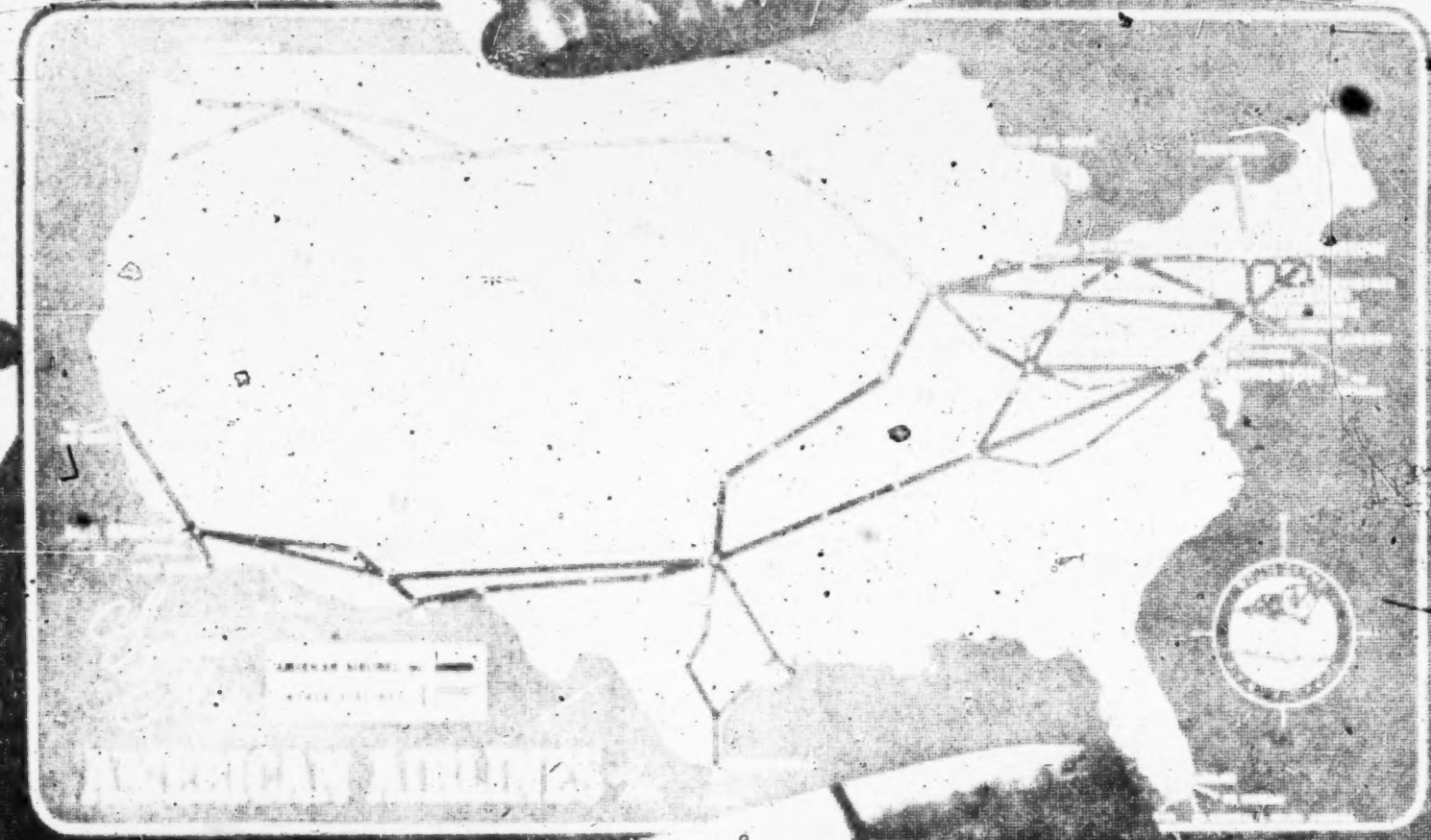
LIFE ALOFT

AMERICAN AT WORK

VACATION FUN

AMERICAN AIRLINES, INC.

Those who Fly in Flagships —



Follow the

AMERICAN WAY

The history of transportation in America is one of the most fast-moving progress. Beginning with Indian canoes on foot and by canoe, the creaking wagon wheel cutting a heavy path through the forest, it is a far step indeed to the great swift airplanes that today speed the traveler from coast-to-coast overnight!

Such progress, such improvement, follows the American way of doing things.

The succeeding pages highlight the methods and spirit of the American way of doing things. The greatest air line as seen in this sound picture. It will show a few of the pleasures and advantages of modern flying as only "The American Way" can show.

131

546

EXHIBIT NO. AA-1
PAGE 14 OF 16 PAGES

546

"THE AMERICAN WAY" ADVERTISING

Scenes from the Sound Picture *The American Way*

SERVICE AND COMFORT
ON THE AMERICAN STANDARD



No "sailing" so happy or exciting as this! First meeting, too, with your Flagship Stewardess whose friendly service makes your trip so completely perfect.

Rule No. 1 in air travel — enjoy yourself, and be yourself. Smoke, read, write letters, fill your eyes with a new world below. Flying is a new kind of living — yet your living habits remain the same.

Something to remember — and pictures through your Flagship window are easy to take. Today's airliners are luxuriously designed — quiet, softly carpeted, beautiful and comfortable in every respect.

Stewardesses are graduate nurses — know the intricacies of diapers, bottle warming, child amusement. Travel is fun for parents — with such willing help! Children under 2 fly free, under 12 half fare.

Meals aloft are more than delicious — they're complimentary. On Skydeppers, service is on tables — and you may have morning orange juice or breakfast in bed! Air travel niceties are many.

"And so to bed" in a Flagship Skydipper means a full-length berth, cool sheets and snug blankets, individual air-conditioning. Separate dressing rooms and lavatories make for ease and comfort.

SPEED AND CONVENIENCE
THAT PAY DIVIDENDS



He who flies can leave later, arrive sooner. This means more time for sports and recreation, for social and family life, more time for important business, too. Executives fly to cover more territory, to save time on the road, to save salary-hours, to keep ahead of competition. Flying is not only the easiest travel method, but gives definite and exclusive advantages and economies.

Ground service is courteous and efficient. Travel agents, hotel transportation desks, Western Union and Postal Telegraph, and American Airlines' Offices make air travel information and reservations easy to get.

From the heart of Metropolitan centers, comfortable airport cars carry you to airport terminals. Attendants help with every detail, handle luggage, are ready to volunteer any information or service you may need.

American Airlines carries 40 pounds of luggage (more than people to cover average needs) free on your ticket. If you do have luggage in excess of this, American gladly takes care of all details in shipping it ahead.

Ground conditions are no definite indication of flying conditions. Flagships frequently fly "over-weather," above clouds, in bright clear sunshine. Whatever the season, American flies where the weather is good.

ALL-YEAR VACATION PLEASURE
WITH "TRAVELER'S CHOICE" COAST-TO-COAST!



American is the only air line flying the Southern All-Year Route coast-to-coast — through the warm sunny Sun Country of Texas, Arizona and Southern California. Vacationers and business travelers find new relaxation, exciting outdoor sports, in the unspoiled American desert. Bright, gay, interesting! The unspoiled American resorts — a land made for enjoyment — all these things are just overnight from the East by Flagship.

In the extra days you save in going by air you can get more play, more rest, more vacation. Traveling by Flagship, you can make "round robin" vacation tours — see and visit the Great Lakes, between Chicago and New York for instance, then make a return trip via Washington at low round-trip fare and a little cost. For extra interest ask about possible optional routings when you fly American.

Air spectacle is Niagara Falls, seen on the regular Niagara Route between New York, Buffalo, Detroit and Chicago. New England, New York State, and the Atlantic Seaboard are other vacation areas in "Flagshipland."

There's an unmistakable joy in going places by air. It offers something for everyone, and all ages. Feeling no sensation of height, or speed, most people enthusiastically declare, "I learned to like flying by flying."

The Route of the Flagships

The American Standard of Service

C. A. B.
DOCKET NO 57.74, 5928

EXHIBIT NO. AA 1
PAGE 16 OF 16 PAGES

AIRCRAFT IDENTIFICATION ADVERTISING



THE NAME "AMERICAN" IN NEWSPAPER ARTICLES

American Buys Planes

The board of directors of American Airlines, Inc., today announced the purchase of 24 DC-6B passenger planes and 6 DC-6A cargo planes. The new equipment represents an investment of \$35,000,000.

Arven H. Saunders, Florida sales manager for American, said the contract with Douglas Aircraft Co., is in addition to the 17 DC-6B's which are being delivered to American this year. The planes announced today are for delivery in 1953.

Miami Daily News
September 20, 1951

**American
Orders 30
New Planes**

NEW YORK—(AP)—American Airlines Inc. announced the purchase for 1953 delivery of 30 planes from the Douglas Aircraft Co. at a cost of \$35,000,000.

They include 24 DC-6B planes capable of carrying 52 passengers and 8,000 pounds of cargo each and six DC-6A airfreighters that carry 27,000 pounds of cargo each.

Douglas, in addition, is delivering to American this year 17 DC-6Bs costing more than \$19,000,000.

C. R. SMITH, airline president, said that when the new planes are delivered, American will have increased its number of available seats by 37 per cent and will have doubled its cargo capacity.

He said the company regards these modern, pressurized, high speed planes as the best equipment before the advent of jet power in air transport service.

"When jet power has been thoroughly tested for commercial use and becomes available, American will purchase jet airplanes," Smith said.

"American Airlines has no plans for the conversion of any of its present aircraft by the installation of jet engines."

Chicago Daily News
September 20, 1951

**AMERICAN WILL
NOT USE JETS****Airlines Orders New Planes of
Propeller Type**

The purchase of 24 DC-6B passenger planes and 6 DC-6A cargo planes at an equipment investment of \$35,000,000 for 1953 delivery was announced today by the Board of Directors of American Airlines, Inc. The contract with the Douglas Aircraft Co. is in addition to the 17 DC-6B's which are being delivered to American this year at an investment in excess of \$19,000,000. Three of the cargo planes had previously been authorized by the directors.

The company announced that no new financing is planned for the purchase of these planes.

When both orders of DC-6B's and the DC-6A's are delivered, American will have increased its number of seats available by 37 per cent and doubled its cargo capacity. The DC-6B's carry 52 passengers and 8,000 pounds more than the DC-6's. The DC-6A airfreighters carry 27,000 pounds of cargo.

These 30 planes have a greater lift than the total number of aircraft contributed by the industry to the military service in 1942. They exceed the capacity of the 60 planes from civilian industry in contract operations on the present Korean air lift. These and American's other 141 airplanes would be available to the government in a national emergency.

As the only major airline operating a completely post-war developed passenger fleet and the largest operator of modern equipment, American Airlines now has flying and on order 28 DC-6 type aircraft and 29 Convairs. In addition, it operates 13 DC-4 airfreighters. The replacement of American's pre-war and war passenger equipment was completed more than two years ago when the DC-3's and DC-4's were retired from passenger service.

American Airlines regards the purchase of these modern, pressurized, high-speed aircraft as the best equipment before the advent of jet power in air transport service.

"When jet power has been thoroughly tested for commercial use and becomes available, American will purchase jet airplanes," C. R. Smith, president, said. "American Airlines has no plans for the conversion of any of its present aircraft by the installation of jet engines. Experience indicates that when a new source of power is developed the best result is obtained by designing new airplanes equipped to utilize that power most effectively."

The Springfield Daily News
September 20, 1951

THE NAME "AMERICAN" IN NEWSPAPER ARTICLES

American Boasts
All New Airliners

American Airlines today emerged as the first air transport company with a completely new passenger fleet of postwar-built aircraft a fleet of 125 planes that cost about \$60,000,000 when ordered three years ago, and now worth if replaced \$85,000,000.

The airline yesterday said farewell to its last 21 passenger DC-3s. At one time it had 94 of these, but they have been sold here and abroad for less strenuous passenger use, though still with a lot of service left.

Most of the DC-4s have been sold, or transformed into air freighters.

The present fleet consists of 50 DC-6, long-range, 52-passenger pressurized flagships, for long hauls at 300 miles an hour. And 75 two-engine 40-passenger Convairs, also pressurized, doing 300 m.p.h. for short hauls.

All 125 planes have been paid for, and the last was delivered this week, the company reported.

New York Journal
March 15, 1949

American Retires Last DC-3;
Air Fleet Fully Modernized

NEW YORK, March 31 — American Airlines Inc. today retired the last of its famous DC-3s from service and became the world's first airline to have a completely new fleet of postwar passenger transport planes in service.

American delivered a check to the Consolidated Vultee Aircraft Corporation for its last new Convair flagship. The airline now has a completed fleet of 50 new 300-mile-an-hour DC-6s for long-range flights and 75 40-passenger Convairs. They cost the airline about \$60,000,000.

These airplanes were bought and paid for within three years, said President C. R. Smith. The 125 bought in today's market, the airplanes would cost \$85,000,000.

A Victim of Progress

The public has already signified its acceptance of the Convair by the fact that a much larger percentage of seats were sold than on its predecessor, the DC-3, during the period when both were available.

William Littlewood, American's vice president in charge of engineering, helped design and develop the 300-mile-an-hour Convair. He also drew up the specifications for the transport that became the DC-3. Work Horse of the Air. At one time American had 94 DC-3s that

carried 10,500,000 passengers and flew 4,600,000,000 passenger-miles since the first one was delivered in 1936.

The DC-3 is a victim of progress, Mr. Littlewood said today. So many advantages in speed, comfort and safety have been designed into the new DC-6 and Convair flagships that the DC-3 is outmoded.

Thousands Used During War

First manufactured by the Douglas Aircraft Company at American's request and under American specifications, the DC-3 became the standard transport on most U. S. airlines and on many foreign routes. Many were taken over by the Air Force during the war and thousands more designated the C-47, were built for military use.

American has been retiring its DC-3s piecemeal during the past year as twin-engine Convairs were delivered. One of those retired today is the flagship Newark, the seventh DC-3 ever built.

The Newark once was a highly successful plane, flying between New York and Los Angeles. During the war, she hauled cargo between bases in the U. S. and flew special missions to the Arctic. The 12-year-old plane has been back in passenger service since 1944. Today it was wheeled into a line of surplus DC-3s for sale at American's overhaul base in Tulsa.

Buffalo News
March 31, 1949

ALL POSTWAR PLANES

American to Retire
Last DC-3 Thursday

American Airlines Thursday will retire the last of its 21-passenger DC-3 planes in favor of larger and faster planes of which the company now has 125 in service.

The air line thus becomes the first to complete its postwar re-equipment program.

At one time American had ninety-four DC-3s, C. R. Smith, president of the company, said Wednesday in announcing the retirement of the last of the slow, small ships.

"We carried 10,500,000 passengers a total of 4,600,000,000 passenger miles between June, 1936, and March, 1949," Smith said.

The company has seventy-five 2-engine, 300-mile-an-hour pressurized Convairs which cost \$22,000,000. Its other fifty planes are the mighty 52-passenger DC-6s for long hauls and the Convair four-engine Convair flagships. Their greater power gives them an added margin of safety.

The Dallas Morning News
March 31, 1949

American Readies
4-Engine Fleet

Twin-engine passenger planes will make their last flights today on the American Airlines system serving 70 cities, C. R. Smith, president of the airline, said here yesterday.

Beginning Friday, the passenger service will use only the four-engine craft — the Douglas-built DC-6 and the Consolidated Vultee Convair — to make the company the country's first 300-mile-an-hour airline.

Smith said the conversion, costing \$40,000,000 since 1945, would make American the first line in the United States to put on "100 per cent new planes since the war."

American's business, he said, was 60 per cent over the first three months of 1948, and he expressed confidence in the business outlook for the immediate future. He described American's proposed sale of its overseas branch to Pan American Airways as a "strictly business deal," so the company could concentrate on domestic air transport.

Ohio State Journal
March 31, 1949

75th Convair Ship
Sent to American

The last Convair-Liner plane of an order of 75 has been delivered to American Airlines here, H. D. Koontz, Consolidated Vultee Aircraft Corp. director of sales, announced today.

It will be flown to Tulsa, Okla., for assignment to passenger service. At the same time American said it was retiring all DC-3 planes from service. The airline's fleet of postwar transports will include 50 four-engine DC-6s and the 75 twin-engine Convair-Liners.

San Diego Journal
April 1, 1949

THE NAME "AMERICAN" IN NEWSPAPER ARTICLES

13-Year Career With Air Line Ended by DC-3s

Transports Retired by
American Saw Rugged
War Service as C-47s

Retirement by American Air-
lines of its last DC-3 on Thursday
put a period to one of the final
chapters in the career of "war air"
plane, the C-47 of the war-time
Army Air Forces.

William Littlewood, the air
line's vice-president in charge of
operations, said:

New York Herald Tribune
April 3, 1949

American's Last DC-3 to End Service in Flight Here Today

The last DC-3 in the American
Airlines fleet will be retired from
service at 9 p. m. Thursday at
Municipal Airport, making Ameri-
can the first air transport com-
pany in the world to have a com-
pletely new, postwar fleet.

A DC-3 flight from El Paso will
terminate here and then continue
to Tulsa in one of the company's
new 40-passenger Convair Flag-
ships.

The DC-3s flagship pennant will
be lowered and the plane's doors

sealed by M. D. Miller, regional
vice president in charge of sales,
and Hugh Gallamore, manager of
operations at Fort Worth. Pilots
and stewardesses will form a color
guard.

A scroll will be signed with the
names and addresses of all pas-
sengers and crew during the final
DC-3 flight and copies will be sent
to them.

At one time American had more
than 90 of these planes in a fleet
that carried 10,500,000 passengers

Fort Worth Star Telegram
March 31, 1949

Last of Faithful DC-3's Is Retired by American

American Airlines this week became the first major air pas-
senger carrier in the nation with a complete new post-war fleet.
The changeover came when the last of the DC-3, 21-passenger
planes was retired from nation-
wide routes.

Speedier Convairliners and large
DC-6s now make up the entire
American fleet. H. C. Duncan, Tulsa
sales manager, joined other officials
of the company in observing the
final shift that gave the airlines
a 300-mile-per-hour fleet.
Officials point out that "so many
advantages in speed, comfort and
safety have been designed into the
new aircraft that it outmoded the
DC-3."

Tulsa Daily World
April 2, 1949

All postwar fleet for American Air

American Airlines is today the
owner of the industry's first post-
war air transport fleet.

It's composed of 75 two-engine,
40-passenger, 300 mph pressurized
Convairs for short hauls, and 50
DC-6 long-range, 52-passenger, 300
mph pressurized flagships for long
hauls.

This combined fleet of 125 air-
planes cost the company approxi-
mately \$60,000,000. They were
bought three years ago with the
last one delivered and paid for
last week. Purchased today, the
fleet would cost in the neighbor-
hood of \$85,000,000.

Last of American's 21-passenger
DC-3s, the planes for which Engi-
neering Vice President William
Littlewood drew up specifications,
has been withdrawn from service.
At one time, American had 94
DC-3s in operation. They carried
10,500,000 passengers, 4,600,000
miles between June, 1936, and
March, 1949.

Most of them have now been
sold to companies, private owners
and foreign countries, and most of
the line's old DC-3s have been sold
or transformed into air freighters.

Meanwhile, the company re-
ported a net loss of \$2,893,671 for
1948 as against a deficit of \$3,-
400,766 in 1947. Principal loss oc-
curred in the first quarter of last
year with operations for each of
the last three quarters at a profit.

Daily News
(Los Angeles)
March 31, 1949

American Line Retires Last DC-3

FOR THE first time since 1936,
American Airlines went into oper-
ation throughout the country to-
day without flying a DC-3 model
passenger craft. Yesterday the
company retired its last DC-3s
from service.

Officials said the move made
the aircraft company the first air
transport company in the world
to have a completely new post-
war fleet of passenger aircraft.

A A now has a complete fleet
of 50 DC-6, long-range, 300-mile-
an-hour pressurized flagships and
75 twin-engine, pressurized Con-
vair aircraft, company officials
announced. The DC-6s cost the air-
line about \$38,000,000 and the Con-
vairs about \$22,000,000, it was
stated.

AT ONE TIME American had
more than 90 DC-3s in a fleet that
carried 10,500,000 passengers and
traveled 4,600,000,000 passenger
miles. The DC-3, built by Douglas
Aircraft, was the same as the
Army's C-47 cargo craft which
earned the title of "Workhorse of
the Air."

One of the planes retired yes-
terday was the flagship Newark,
whose history carried her through
commercial passenger service, war
service, freight transport and back
again to passenger service.

The Newark went into service
as a deluxe sleeper plane on the
New York-Los Angeles flight in
1936, carrying 14 sleeping passen-
gers westbound on a 17-hour
schedule, making three stops en
route.

SIX YEARS after her maiden
flight, the Newark joined the
Army. The Army gave her an
abandonment certificate, tore out her
interior fittings and
replaced them with
her military
equipment.
The Newark
went back to AA
con-

Syracuse Herald Journal
April 1, 1949

THE NAME "AMERICAN" IN NEWSPAPER ARTICLES

AMERICAN RETIRES THE DC-3

American Airlines has retired from service its ~~last~~ transport airplanes with the exception of three milk-runners which are slated to go April 1. While the "Doug" has years of scheduled flying ahead of it, the shift to Convair airliners by one of the nation's largest carriers cannot fail to mark an era for the aircraft which has been the workhorse of the airlines since 1933.

What an airplane! Its advent immediately set the pattern for scheduled service the world over. It was standard equipment when the first good air safety records were made in this country. Its logs bear the testimony of countless pilots operating in the gamut of rugged conditions. When war came, its reputation was burnished even more brightly. It filled the tremendous gap in need for a reservoir of transports in a hurry. Out came the plush chairs, in, went the bucket seats, with paratroopers to match. It began to tow gliders. It retrieved them too. Instead of cruising at rigidly prescribed altitudes on the airways, its nose skimmed yards above the desert or the tree tops, or sought concealment by harreling between the banks of winding rivers. In the war it went everywhere, saw everybody, did everything. Normandy skies held clouds of Dougs, stripped for invasion. It tumbled sup-

New York Times
March 7, 1949

American Gets Last Of 75 Convair Ships

American Airlines has taken delivery on the last of its order for 75 Convair flagships. The 40-passenger transports replace the company's fleet of DC-3 aircraft, the last of which is being retired today. Deliveries on the Convair order began last May. In addition American operates 50 DC-6 airplanes, making it the first airline to have a completely new postwar fleet of passenger aircraft.

Chicago Journal of Commerce
March 31, 1949

American Stops Operating DC-3s

American Airlines will stop using DC-3 airplanes tomorrow to speed up operations, according to President C. R. Smith.

Smith said the airline would use DC-6s and Convairs on passenger runs, while some of the slower DC-4s would be used for some freight operations.

American Airlines will be the first domestic carrier to be operated entirely in excess of 300 miles an hour, Smith said.

He said American Airline business probably would be good this year.

"We are already ahead of the first three months of last year," he said.

The Tribune-Sun
(San Diego)
March 31, 1949

American Starts 300 mpr. Airline

American Airlines starting Friday will be the first "300-mile-an-hour airline" in the nation. C. R. Smith, airline president, announced this Wednesday in Columbus during a trip to confer with local office personnel. He said his company has spent \$60,000,000 since 1945 in a conversion program which also makes it the first line in the country to put on "100 per cent new planes since the war."



C. R. Smith
Douglas-built, four-engine DC-6 and the Consolidated Vultee Convair.

He described American's proposed sale of its overseas branch to Pan American Airways as a "strictly business deal" so that the company could concentrate on domestic air transport. He said his firm's business is 30 per cent over the corresponding period last year.

Columbus Dispatch
March 31, 1949

Airline Stops Using DC-3 Planes

Columbus, O., March 31 (UP)—American Airlines stopped using DC-3 airplanes today to speed up operations, President C. R. Smith said tonight.

Smith said the airline would use DC-6s and Convairs on passenger runs, while some of the slower DC-4s would be used for some freight operations.

American Airlines will be the first domestic service to be operated entirely in excess of 300 miles an hour, Smith said while inspecting local facilities.

The changeover had cost \$60,000,000, he said, while other improvements costing \$20,000,000 had been made since 1945.

Smith predicted the use of jet planes for commercial purposes within six to eight years, but said jet planes now were "too skinny" and impractical for passenger and freight hauling.

He said American Airlines business probably would be good this year.

"We are already ahead of the first three months of last year," he said.

Illinois State Register
March 31, 1949

554 C. A. B.
O Docket Nos. 5774, 5928

Exhibit No. AA 2
Page 6 of 12 Pages

Copy

AETNA LIFE INSURANCE COMPANY
Hartford 15, Connecticut
February 26, 1953

R. E. S. Deichler,
Vice President—Sales

American Airlines
100 Park Avenue
New York 17, N. Y.

Dear Mr. Deichler:

Thank you for your February letter enclosing the booklet of listed hotels as well as *American's* Progress Report for 1952.

I have found my air travel card to be very helpful upon several occasions in cashing checks, not only in hotels which are listed in your booklet but in some others as well.

I recently received the credentials, together with membership card, etc., into the 100,000 Miles Club of United Air Lines. You may be interested in learning that a good part of the approximate 125,000 miles I have flown as a passenger on airlines has been with *American*. As a matter of fact, my first flight of any significance was from El Paso to Nashville aboard an *American* sleeper plane in May of 1939.

It is my understanding that you have an honorary organization in *American* known as the Admiral's Club. I would appreciate any information you could give me regarding the qualifications for membership in such an organization.

Sincerely yours, (S.) William H. Holmes, Pension
Trust Supervisor.

emb.

555

C. A. B.

Docket Nos. 5774, 5928

Exhibit No. AA 2

Page 7 of 12 Pages

Copy

Protectowire
(Trade Mark)

The Protectowire Co.
Hanover, Massachusetts

W. G. Holmes

June 3, 1952

Mr. C. B. Smith, President
American Airlines, Inc.
La Guardia Field,
New York, N. Y.

Dear Fleet Admiral Smith:

Thank you very much for your letter of May 15th. You may be sure I appreciate the duties as well as the privilege of being an Admiral of the Flagship Fleet.

For more than a decade I have been enthusiastic booster for air travel, particularly *the American way*.

There is not the slightest doubt that your personnel is superior to that of other airlines in their contacts with passengers, and particularly prospective passengers. Those who travel more than casually are bound to notice it.

In the general interest, I think your advertisement in Time for May 26th was outstanding.

Sincerely, (S.) W. G. Holmes, President.

WGH/R

566 C. A. B.
Docket Nos. 5774, 5928

Exhibit No. AA 4
Page 2 of 34 Pages

Copy

Robert Mack Light
Attorney at Law
440 Court Street
San Bernardino, Calif.
Telephone 4791

November 30, 1951

American Airlines
523 West Sixth Street
Los Angeles, California

Gentlemen:

I am familiar with your advertising of a "\$70.00 fare" to Chicago and when the other day it became necessary to secure a ticket for a service man's wife to join him under conditions when every penny counted I turned to your service with request for your most economical fare fully expecting the \$70.00 rate, although I did have experience enough with such representations to assume that in your \$70.00 offer you were gracefully sliding over the tax angle of the transaction.

When the ticket was delivered for flight 602 for 9:50 A. M. tomorrow morning, I was, to put it frankly, shocked to find the base charge \$85.00 instead of \$70.00, with, of course tax on top of that. And then shortly after, frankly to my rather considerable irritation, I heard the KMPC 3:30 P. M. program break spot announcement of your \$70.00 fare to Chicago.

Have you any reason to suggest why this matter should not be called to the attention of the Federal Communications Commission?

Very truly yours, (S.) Robert M. Light

RML:P

556

C. A. B.

Docket Nos. 5774, 5928

Exhibit No. AA 2

Page 8 of 12 Pages

Copy

DEPARTMENT OF COMMERCE
National Production Authority
Washington 25

November 27, 1951

Mr. R. E. S. Deichler
Vice President—Sales
American Airlines
100 East 42nd Street
New York 17, New York

Dear Mr. Deichler:

The receipt of your "Winter Travel Report" today reminded me of the always courteous service which is rendered by *American*.

I would like to take this opportunity to expound a bit about the Washington Admirals Club. It is my pleasure to report that at no time when called upon to aid with reservations or to extend the use of the club facilities have I ever received anything but the most courteous reception.

Thanking *American* and your Washington Club personnel for such enjoyable hours of travel that I experience, I remain

Sincerely yours, (S.) J. E. Sweeney

557

C. A. B.

Docket Nos. 5774, 5928

Exhibit No. AA 2

Page 9 of 12 Pages

*Copy*Dear Mr. C. R. Smith: I am flying with *American*.*From* Los Angeles. *To* Chicago.

On Flight Number 606 and I feel that of all the airlines I have travelled, *American* is far better than the others. The service I received has been excellent and I really have

567 C. A. B.
Docket Nos. 5774, 5928

Exhibit No. AA4
Page 3 of 34 Pages

Copy

December 4, 1951

Mr. Robert Mack Light
440 Court Street,
San Bernardino, California

Dear Mr. Light:

This will acknowledge your letter of November 30. It would appear as though the advertisement you heard over the radio was that of a non-scheduled airline. One such company uses a name very similar to ours. American Airlines is a certificated scheduled airline.

American Airlines does not advertise on Station KMPC and has never offered a rate of \$70.00 from Los Angeles to Chicago. Our aircoach fare is \$85.00 plus a Federal Transportation Tax of 15%, as published in our tariff which is filed with the Civil Aeronautics Board.

We regret that because of an apparent misunderstanding you received the impression our company was engaged in a false advertising practice, as our policy has always been entirely the opposite of that.

Despite the fact the ticket you purchased from us cost in excess of the transportation you heard advertised on the radio, we are sure the difference in price was more than compensated for in service. American's aircoach flights are operated with 300 mile-per-hour Douglas DC-6 pressurized airplanes, which operate non-stop Los Angeles to Chicago in 6 hours and 25 minutes providing the finest aircoach transportation obtainable.

Yours very truly, Frank M. Burg, District Sales
Manager.

FMB:hem

enjoyed my trip. Now I know why so many people fly *American*. I cannot suggest any improvement, as I feel it is beyond improving. I want you to know when I fly again you can be sure it will be *American*.

My Name; Chris G. Velickoff.

Street and No. 20239 Norwood.

Business Address, City and Zone No.; Detroit 34, Mich.

Date 10/28/52.

AA Form T15J.

558

C. A. B.

Docket Nos. 5774, 5928

Exhibit No. AA 2

Page 10 of 12 Pages

Copy

M. C. Rumbaugh, M. D.

P. J. Morgan, M. D.

H. C. Smith, M. D.

H. B. Harris, M. D.

Office Hours

By Appointment

RUMBAUGH CLINIC

10 West Dorrance Street

Kingston, Penna.

Jan. 7, 1952

R. E. S. Deichler, Vice President

American Airlines

100 Park Avenue

New York 17, N. Y.

My dear Mr. Deichler,

Your letter of January 2nd regarding the termination of the Dallas to Washington flight at Knoxville, Tennessee in December, I feel that no apology is necessary and I appreciate the safety precaution offered. I want to commend very highly Mr. Hallock, your sales manager in Knoxville, as he handled the situation in a way that kept all the passengers happy. I assure you I always fly *American* when I can.

Very sincerely yours, M. C. Rumbaugh, M. D.

MCR:jp.

559 C. A. B.
Docket Nos. 5774, 5928

Exhibit No. AA 2
Page 11 of 12 Pages

Copy

The Coca-Cola Co.
P. O. Drawer 1734
Atlanta 1, Georgia
John D. Goodloe
Vice President
November 12, 1951

Miss V. Ponder
Secretary to Mr. E. L. Roy
American Airlines
Love Field
Dallas 9, Texas

Dear Miss Ponder:

With reference to your kind note of November 2, this is to advise that the size 7 moccasins were received and were exactly the right size.

I appreciate so much your kindness in the matter and I shall continue to fly *American* as often as possible just as I have been doing for a number of years.

Very truly yours, John D. Goodloe:

560 C. A. B.
Docket Nos. 5774, 5928

Exhibit No. AA 2
Page 12 of 12 Pages

Copy

Dear Mr. C. R. Smith: I am flying with *American*.
From New York City. *To* Cincinnati.
On Flight Number 164 and 335.

Having fine trip as usual. I have especially enjoyed the on schedule service with few delays that *American* has been able to give. Even tho once flight 560 left Chicago at 7:16 and I arrived at 7:17 and missed it I couldn't help but realize that this is certainly a step in the right direction.

The very simple and efficient way *American* handles

568 C. A. B.
Docket Nos. 5774, 5928

Exhibit No. AA4
Page 4 of 34 Pages

Copy

Robert Mack Light
440 Court Street
San Bernardino, California

December 5, 1951

Radio Station K M P C
5939 Sunset Boulevard
Hollywood, California

Gentlemen:

I recently caused the purchase of an ~~airline~~ ticket from Los Angeles to Chicago on the basis of advertisements heard over your station which I am prepared to swear were made in the name of American Airlines indicating a fare of \$70.00. This ticket came to hand and was paid for on the 28th day of November 1951 and to my amazement I found that the basic charge was \$85.00 instead of the \$70.00 I had anticipated from your advertisement and for that reason the matter was very fresh in my mind when on November 29th at 3:30 p. m. on your station break announcement, I again heard in a name which I am prepared to swear was American Airlines, an Announcement offering a \$70.00 fare to Chicago. When this matter was called to the attention of American Airlines by letter addressed to that company on the 30th day of November, 1951, reply from that company was forwarded to me by Frank M. Burg, District Sales Manager, advising that that company had never advertised rates of \$70.00 from Los Angeles to Chicago and moreover that that company does not advertise on your station.

I will appreciate an explanation of this matter. I am sending a copy of this letter to the attention of Mr. Burg.

Very truly yours, (S.) Robert M. Light.

RML:C

cc: American Airlines
523 West Sixth Street
Los Angeles 14, Calif.
att: Mr. Frank M. Burg
District Sales Manager

569 C. A. B.
Docket No. 5774, 5928

Exhibit No. AA4
Page 5 of 34 Pages

Copy

Robert Mack Light
440 Court Street
San Bernardino, California

December 12, 1951

Radio Station K M P C
5939 Sunset Boulevard
Los Angeles 28, California

Attention: Mr. R. O. Reynolds, Vice President

Gentlemen:

I acknowledge with thanks letter addressed to me by Mr. Reynolds under date of December 11th enclosing the script of the air line advertisement placed on the air at 3:30 p. m. on November 29th, 1951 and in which you request that I let you know if there is any further question about the matter.

I have no further question about the matter, but I do feel that it is only right and proper to point out that while naturally I am in no position to question the inclusion of the word "North" in the script. I am very much in a position to state what impression the actual *spoken* word made upon at least one listener and that was in effect to so far emphasize the words "American Airlines" and de-emphasize the word "North" as it appears in the script as to create the impression that the entire subject of discussion was "American Airlines".

Very truly yours, (S.) Robert M. Light.

RML:C

570 C. A. B.
Docket Nos. 5774, 5928

Exhibit No. AA4
Page 6 of 34 Pages

Copy

Affidavit

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I Frederic W. Nicholls, being first duly sworn, state the following:

baggage and checking in at the airports is very commendable.

I wrote once before and would like some specific info on the different Flagships.

Congratulations on an exceptionally well managed airline.

My Name: F. Allen Vieweger.

Street and No.: 8001 Hamilton Ave.

Business Address: Crosley Mfg. Co.

City and Zone No.: Cincinnati, Ohio.

Date 1-20-51.

AA Form T15J.

* * * * *

During the month of April, 1952, Mr. F. M. Burg, District Sales Manager for American Airlines, received a call from Mr. James C. Meeks who is affiliated with the Painters Union Local 116 at 1748 Santee Street, Los Angeles, California. Mr. James C. Meeks notified Mr. F. M. Burg that American Airlines ticket-office signs were being repainted by non-union painters, and that some action would be taken unless this practice was discontinued.

I was contacted by Mr. F. M. Burg to investigate and to call Mr. Meeks at Richmond 77861. I personally called Mr. James C. Meeks and explained that to our knowledge no American Airlines signs were being repainted at the time and further explained that all sign painting was handled under contract by local firms which we knew to be union. I asked Mr. Meeks to please take no action until he had time to investigate further, and to let me know what additional information he could obtain.

Mr. James C. Meeks called me later in the day and advised that the American Airlines office involved was located on Hill Street. I advised Mr. Meeks that American Airlines did not maintain a Hill Street location, and after considerable conversation explained to his satisfaction that the sign involved was a North American Airlines sign which pertained to a non-scheduled airline, being in no way affiliated with American Airlines.

10/28/52 (S.) Frederic W. Nicholls

Subscribed and sworn to before me this 28th day of October, 1952.

(S.) J. E. Higgins, Notary Public. (Seal.)

573

C. A. B.

Exhibit No. AA 4

Docket Nos. 5774, 5928

Page 9 of 34 Pages

Copy

Affidavit

STATE OF CALIFORNIA,

County of Los Angeles, ss:

I, Emily Jeanne Newkirk, being first duly sworn, state

PO-131



No. 514294

THE UNITED STATES OF AMERICA

To All To Whom These Presents Shall Come:

This is to certify that by the records of the United States Patent Office it appears that American Airlines, Inc.,
of New York, N. Y., a corporation of Delaware,

did, on the 27th day of July, 1948, duly file in said Office an application for Registration of a certain SERVICE MARK shown in the Drawing for the SERVICES specified in the Statement, a copy of which Drawing and Statement, together with the Declaration, is hereby annexed and made a part hereof, and duly complied with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade-Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

This is to certify that by the records of the United States Patent Office it appears that American Airlines, Inc.,
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And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade-Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

PRINCIPAL REGISTER

to American Airlines, Inc., its successors or assigns.

This certificate shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-third day of August, in the year of our Lord one thousand nine hundred and forty-nine, and of the independence of the United States the one hundred and seventy-fourth.

Lawrence B. Kingsland
COMMISSIONER OF PATENTS

TEST:

John L. Himmel
LAW EXAMINER

Registered Aug. 23, 1949

Registration No. 514,294

PRINCIPAL REGISTER

Service Mark

Section 2 (f)

UNITED STATES PATENT OFFICE

American Airlines, Inc., New York, N. Y.

Act of 1946

Application July 27, 1948, Serial No. 562,340

AMERICAN AIRLINES

(Statement)

American Airlines, Inc., a corporation duly organized under the laws of the State of Delaware, having its principal place of business at 100 East 42nd Street, New York, New York, has adopted and is using the service mark shown in the accompanying drawing, for AIR TRANSPORT OF PASSENGERS AND FREIGHT, in Class 35, Services, and presents herewith five photographs showing the said mark as used in connection with the sale or advertising of such services, the said mark being used as follows: on aircraft and other mobile equipment, on letterheads, advertising pamphlets, leaflets, tickets and timetables, and

(Declaration)

R. E. S. Deichler, being duly sworn, deposes and says that he is a vice president of American Airlines, Inc., the applicant named in the foregoing statement, that he believes that said corporation is the owner of the service mark herein sought to be registered which is in use in commerce among the several States and between foreign nations and the United States; that the said mark has become distinctive of the services of applicant and its related companies described below, having been in exclusive and continuous use by applicant and said related companies in said commerce for more than five years next preceding the date of the filing of this application; that no other person, firm

Application July 27, 1948, Serial No. 562,340

AMERICAN AIRLINES

(Statement)

American Airlines, Inc., a corporation duly organized under the laws of the State of Delaware, having its principal place of business at 100 East 42nd Street, New York, New York, has adopted and is using the service mark shown in the accompanying drawing, for AIR TRANSPORT OF PASSENGERS AND FREIGHT, in Class 35, Services, and presents herewith five photographs showing the said mark as used in connection with the sale or advertising of such services, the said mark being used as follows: on aircraft and other mobile equipment, on letterheads, advertising pamphlets, leaflets, tickets and timetables, and generally in applicant's advertising, promotional and performance activities pertaining to such services; and requests that the same be registered in the United States Patent Office on the Principal Register in accordance with section 2(f) of the act of July 5, 1946. Applicant makes no claim in the registration to the word "Airlines" apart from the mark shown, reserving, however, all other rights in or to the same.

The word "American" was first used in the sale or advertising of services and the services rendered in commerce among the several States which may lawfully be regulated by Congress in March 1930 by American Airways, Inc., a Delaware Corporation, applicant's predecessor. The service mark in the form shown in the drawing was first used in April 1934 and first used in the sale or advertising of services and the services rendered in commerce among the several States which may lawfully be regulated by Congress in April 1934.

AMERICAN AIRLINES, INC.,
By WM. J. HOGAN,
Treasurer.

(Declaration)

R. E. S. Deichler, being duly sworn, deposes and says that he is a vice president of American Airlines, Inc., the applicant named in the foregoing statement, that he believes that said corporation is the owner of the service mark herein sought to be registered which is in use in commerce among the several States and between foreign nations and the United States; that the said mark has become distinctive of the services of applicant and its related companies described below, having been in exclusive and continuous use by applicant and said related companies in said commerce for more than five years next preceding the date of the filing of this application; that no other person, firm, corporation or association, to the best of his knowledge and belief, has used or has the right to use said mark in commerce which may lawfully be regulated by Congress either in the identical form thereof; or in such near resemblance thereto as might be calculated to deceive, save and except use thereof in commerce between foreign nations and the United States by American Overseas Airlines, Inc., a corporation of Delaware, and American Airlines de Mexico, S. A., a corporation of Mexico, each of which is controlled by applicant in respect to the nature and quality of the services in connection with which said mark is used; that the drawing and description truly represent the mark sought to be registered; that the photographs show the said mark as actually used in connection with the sale or advertising of services; and that the facts set forth in the statement are true.

AMERICAN AIRLINES, INC.,
By R. E. S. DEICHLER,
Vice President.

This Registration will be canceled by the Commissioner of Patents at the end of six years following the date of registration, unless within one year next preceding the expiration of such six years, the registrant file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

For the past two and one-half years, I have managed American Airlines ticket office at Lockheed Air Terminal, Burbank, California. I continually talked to passengers who have contacted American Airlines to check in for North American Airlines' 9:30 departure. I explain to these passengers that they are talking to American Airlines and that North American is a non-scheduled airline who has a flight departure at 9:30 P. M.

I also have passengers contact me who present a Buyers League Script Book and who state that the coupons are good for discount on American Airlines. One passenger in particular (name unknown) stated positively that his script book entitled him to a discount and was not satisfied until after calling his secretary who informed that the name was North American Airlines.

People who come to Burbank to meet passengers coming in on North American flights continually contact my office for information after seeing the American Airlines sign. When notified that North American is a non-scheduled airline they ask what is the difference between a scheduled or a non-scheduled airline.

Passengers arriving Burbank on N. A. tried to get baggage at A. A. L. counter, Tr. 107, 8 a daily occurrence.

10/28/52 (S.) Emily Jeanne Newkirk.

Subscribed and sworn before me this 28th day of October, 1952.

(S.) J. E. Higgins, Notary Public. (Seal.)

574 C. A. B.
Docket Nos. 5774, 5928

Exhibit AA4
Page 10 of 34 Pages

Copy
Affidavit

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, Bonnie Rowley, being first duly sworn, state the following:

I am reservations agent with American Airlines telephone sales department.

On October 22 at two o'clock in the afternoon a Mrs.

Rutt called and inquired as to the arrival of flight 628 from Miami. She had just received a telegram stating that relations were arriving American Airlines at Burbank.

Since Mrs. Rutt had stated that she had traveled on American Airlines many times and knew our arrivals and departures were from International Airport, she was very skeptical and called inquiring if we had changed the location of our airport.

I explained the facts of "American Airlines" being confused with the non-scheduled "North American Airlines" at which statement the inquirer expressed shock and dismay at her relatives' misguidance.

10/28/52 (S.) Bonnie Rowley.

Subscribed and Sworn to me this 28th day of October 1952.

(S.) J. E. Higgins, Notary Public. (Seal.)

582 C.A.B.
Docket Nos. 5774, 5928

Exhibit No. AA 4
Page 18 of 34 Pages

COPY

AFFIDAVIT

STATE OF CALIFORNIA,
County of Los Angeles, ss.

I, Corinne O. Perry, being first duly sworn, state the following:

I have been assigned as ticket agent for the past thirteen months at American Airlines ticket office located at Lockheed Air Terminal, Burbank, California.

During the time I have been stationed at Burbank, passengers frequently contact me asking what time our flight will arrive in Burbank. I explain to these passengers that American Airlines does not operate into Burbank, and finally have to direct them to the North American Airlines ticket counter.

I have also had passengers contact me who present an A.F. of L. Buyers League Script Book and state that the

coupons are good for discount on American Airlines. These people also have to be informed that this script is good on North American Airlines which is not affiliated with American Airlines in any way.

I also continually talk to passengers who come to the American Airlines ticket counter to check in for North American's 9:30 departure. I explain to these people that they are talking to American Airlines and that it is North American Airlines, a non-scheduled airline, who has a flight at 9:30 P.M.

There is definitely a lot of confusion in the minds of the people I have talked to regarding the difference between American Airlines and North American Airlines. Most of these people, when told the difference, insist that they understood that the airline that they purchased their ticket on was a scheduled carrier.

10/29/52 (S.) CORINNE O. PERRY.

Subscribed and sworn to before me this 29th day of October, 1952.

(S.) J. E. HIGGINS,
Notary Public.

592 C.A.B.
Docket Nos. 5774, 5928

Exhibit No. AA 4
Page 28 of 34 Pages

COPY

Report of Inquiry
Re "North American Airlines"

While on duty as a ticket agent for American Airlines, Inc., on November 13th, 1952, an inquirer entered the office at approximately 2:30 P.M. requesting information about "North American Airlines" services.

The caller said

I was told by a friend not to take American Airlines because they take about 3 days instead of the scheduled time to go from New York to Los Angeles.

The passenger was under the impression she was talk-

ing to N. American Airlines and there was definite confusion between the two names.

(Signature) (S.) CORINNE O. PERRY,
(Ticket Agent).

Los Angeles.

594 C.A.B.
Docket Nos. 5774, 5928

Exhibit No. AA 4
Page 30 of 34 Pages

COPY

Report of Inquiry RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on 15 November, 1952; I received a telephone call at approximately 10:30 A.M. requesting information about "North American Airlines" services. The caller said, "I would like to check on your flites to New York that I saw advertised on television last nite for \$80.00". Upon asking the airline she claimed that it was AAL as she had written the name down. I explained that it was North American she had seen, and the difference, upon which we finally made a res. for her with her 10 yr old child on our Air Tourist Service. (Psgr's name Mrs. Fernandez HLD6 604/8 Dec)

(Signature) (S.) BONNIE ROWLEY,
Reservations Agent.

Los Angeles.

597 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 4
Page 33 of 34 Pages

COPY

Report of Inquiry RE "North American Airlines."

While on duty as a ticket agent for American Airlines, Inc., on November 18th, 1952 an inquirer entered the office

at approximately 5:00 P. M. requesting information about "North American Airlines" services.

The caller said,

"My son was supposed to leave Washington last night and to arrive at 8:30 this morning, but when I checked I was told they were unable to get out on account of fog. Can you tell me whether they will be leaving Washington tonight."

I then stated that to my knowledge our flights had had no difficulty in Washington; the caller said

"I was told by your Santa Monica office that the flight would leave tonight and arrive at Burbank tomorrow morning. I cannot seem to get a co-ordinated story."

The caller insisted that it was American Airlines and became indignant when I told her that we had no Santa Monica office nor did we operate into Burbank.

Caller was referred to N. American.

(S.) Corinne O. Perry, Ticket Agent.

. Los Angeles

* * * * *

601 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 3 of 38 Pages

COPY

Affidavit of Margery Avery, New York

I, Margery Avery, being first duly sworn state the following:

While on duty as a reservations agent for American Airlines, Inc., on October 25, 1952, I received three telephone calls from persons requesting information about North American Airlines' services, as follows:

Between 10:00 and 12:00 A. M., I received a call requesting information about American's \$44.00 fare to Miami, Florida. I explained that American did not serve Miami. It developed that the caller had seen North American Airlines advertising a \$44.00 fare to Miami.

At approximately 1:00 P. M. I received a call requesting

information as to the arrival of a North American Airlines' flight from the West Coast.

At approximately 2:00 P. M. I received a call from another person requesting information about the arrival of a North American Airlines' flight from the West Coast.

(S.) Margery H. Avery

Subscribed and sworn to before me this 4 day of November, 1952:

(S.) Miriam J. O'Connor, Notary Public
(SEAL)

New York

606 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 8 of 38 Pages

COPY

Report of Inquiry RE "North American Airlines"

While on duty as a reservations agent for American Airlines, Inc., on November 8, 1952, I received a telephone call at approximately 2:15 P. M. requesting information about "North American Airlines" services.

The caller said, and insisted, that he just heard on the radio, American Airlines advertising \$24.00 service to Chicago. I tried to explain, but passenger became irritated and insisted again, that I evidently didn't know my fares. I'm afraid we lost a passenger—he definitely believed I was in the wrong, by stating repeatedly "It was American."

(S.) Carolyn Houck, Reservations Agent.

New York

The caller was certain it had been American, because she had been to the airport when her friend departed.

(S.) Barbara A. Heide, Reservations Agent.

New York.

①

607 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 9 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on Nov. 8, 1952, I received a telephone call at approximately 3 P. M. requesting information about "North American Airlines" services.

The caller said,

"Is this where I make reservations on North American Airlines?"

(S.) Barbara A. Heide, Reservations Agent

New York

609 CAB
Docket Nos. 5774, 5928

Exhibit AA 5
Page 11 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on Nov. 10, 1952, I received a telephone call at approximately 11:55 A. M. requesting information about "North American Airlines" services.

The caller said,

"North American?"

"No sir, this is American Airlines."

"Is this North American Airlines?"

"No, American Airlines. May I help you?"

"Wrong number."

(S.) Barbara A. Heide, Reservations Agent.
New York.

613 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 15 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on 11/22/52, 1952, I received a telephone call at approximately 4:25 P. M. requesting information about "North American Airlines" services.)

The caller said,

Inquiring re information Non Sked into Marine Base from Chicago.

(Signature) (S.) M. H. AVERY,
Reservations Agent.

New York.

614 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 16 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on 11/22/52, 1952, I received a telephone call at approximately 5:50 P.M. requesting information about "North American Airlines" services.

The caller said,

North American Airlines to Miami

(Signature) (S.) M. H. AVERY,
Reservations Agent.

New York.

615 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 17 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on November 22, 1952, I received a telephone call at approximately 8 P.M. requesting information about "North American Airlines" services.

He was interested in securing information regarding N.A. Fli. that was grounded in Kansas City.

(Signature) (S.) JEAN REYNOLDS,
Reservations Agent.

New York.

623 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 25 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on December 5, 1952, I received a telephone call at approximately 1:15 P.M. requesting information about "North American Airlines" services.

The caller said,

Her friend had a ticket on North American Airlines for a flite this afternoon at 3:00 p. to Miami. The caller wanted to know from where the flite would be leaving. I said that it would probably be from the Marine Terminal, but that

she should call NE 9-9000 for further information.

(Signature) (S.) BARBARA A. HEIDE,
Reservations Agent.

New York

625 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
—Page 27 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on Wednesday 12/7, 1952, I received a telephone call at approximately 4:40 P. M. requesting information about "North American Airlines" services.

The caller said,

Insisted "American" advertised flights to Miami in newspapers and magazines.

(Signature) (S.) MARGERY H. AVERY,
Reservations Agent.

New York

628 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 30 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines"

While on duty as a reservations agent for American Airlines, Inc., on *December 11*, 1952, I received a telephone call at approximately 5:15 P. M. requesting information about "North American Airlines" services.

The caller said,
he wanted information about our service to Miami. When told that the service is on Eastern and National, he replied that last year he'd flown American to Miami for approx. \$39—He then said he'd been given information about a flite at 9:30 A. M., and wanted to know if North American is the same as American Airlines. The passenger evidently was quite confused. He realized he'd flown on a non-sked airline last year, and he was certain we could help him with the same type of service.

(S.) Barbara A. Heide, Reservations Agent
New York.

633

CAB

Docket Nos. 5774, 5928

Exhibit No. AA 5

Page 35 of 38 Pages

COPY

Report of Inquiry

RE "North American Airlines."

While on duty as a reservations agent for American Airlines, Inc., on December 22, 1952, I received a telephone call at approximately 8:45 A. M. requesting information about "North American Airlines" services.

The caller said,
he was expecting a flight from California which is coming into the Marine Terminal. I asked him which airline is operating the flight, and he answered "American."
I suggested he call NE. 9-9000 for information.

Barbara A. Heide, Reservations Agent •

New York.

634 CAB
Docket Nos. 5774, 5928

Exhibit No. AA-5
Page 36 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines"

While on duty as a reservations agent for American Airlines, Inc., on *December 23, 1952*, I received a telephone call at approximately *11:10 P. M.* requesting information about "North American Airlines" services.

The caller

stated that we went to Miami. I explained we did not have direct service and suggested Eastern and National. Passenger quite confused, was sure it was American.

(S:) Carolyn Housk, Reservations Agent
New York.

636 CAB
Docket Nos. 5774, 5928

Exhibit No. AA 5
Page 38 of 38 Pages

COPY

Report of Inquiry
RE "North American Airlines"

While on duty as a reservations agent for American Airlines, Inc., on *December 29, 1952*, I received a telephone call at approximately *4:40 P. M.* requesting information about "North American Airlines" services.

The caller said,

she wanted fare information on our Air Tourist service to Chicago. When I told her \$33.00 plus tax, making a total of \$37.95, she said that was strange. A friend had taken American Airlines from Chicago and paid \$24.00 plus tax.

BROCHURES CIRCULATED BY "NORTH AMERICAN"

SAMPLE BROCHURE ADVERTISING

Better by Air ...
Best by American!

With the fleet new Convair—newest Flagship aloft,
American Airlines brings to Air-Age travelers the
finest standards yet in the always-fine standard
American service. Thanks to astonishing efficiency
of operation, the Five-Mile-A-Minute speed and
the postwar comfort of the Convair Flagship are
yours at regular low American Airlines rates.



With the fleet new Convair—newest Flagship aloft,
American Airlines brings to Air-Age travelers the
finest standards yet in the always-fine standard
American service. Thanks to astonishing efficiency
of operation, the Five-Mile-A-Minute speed and
the postwar comfort of the Convair Flagship are
yours at regular low American Airlines rates.



AMERICAN AIRLINES

Printed in U.S.A.



662

"NORTH AMERICAN AIRLINES, INC."

Dockets Nos. 5774 and 5928

Stipulation of Facts

The following items are stipulated as facts for purposes of this proceeding:

1. American Airlines, Inc. was incorporated in Delaware on April 11, 1934, and commenced business on May 13, 1934 when it acquired all of the assets of American Airways Inc., which had been incorporated January 25, 1930. Since commencing business, American Airlines, Inc. has continuously engaged in the air transportation of persons, property and mail. Pursuant to certificates of public convenience and necessity duly issued under the Civil Aeronautics Act, American Airlines, Inc. is, and has since prior to August 22, 1938 engaged in such air transportation on a regularly scheduled basis between, among other places, New York, Chicago and Los Angeles.

2. Twentieth Century Airlines, Inc. was incorporated in North Carolina on May 4, 1946, and holds a letter of registration as a large irregular air carrier. On March 3, 1952, Twentieth Century Airlines, Inc. amended its articles of incorporation so as to change its name to North American Airlines, Inc. Since on or about April 21, 1951, Twentieth Century Airlines, Inc. has engaged in the air transportation of persons between, among other places, New York, Chicago and Los Angeles under the name "North American Airlines" or "North American".

3. American Lines, Inc. has registered the name "American Airlines" under the Federal Trademark Act, 15 U. S. C. 1051 *et seq.* on the Principal Register (No. 514294) as a service mark used in connection with the furnishing of air transportation. An authentic copy of such registration certificate is reproduced as American's Exhibit AA-3 in this proceeding.

* * * * *

"NORTH AMERICAN AIRLINES, INC."

Dockets Nos. 5774 and 5928

Stipulation of Documentary Material

It is hereby stipulated and agreed by and between counsel for the parties and intervenors herein and Bureau Counsel that the following documents and material shall, by this reference, be incorporated into and considered a part of the record in this proceeding:

1. The Official Guide of the Airways for each month prior to April, 1943; the Universal Airline Schedules for each month from April 12, 1943 through September, 1944; the American Aviation Traffic Guide for each month from October, 1944 to and including October, 1948, and the Official Airline Guide for each month prior to and including the date of oral argument before the Board in this proceeding;

* * * * *

5. Monthly reports, Forms 2380 and 2789, for each month through December, 1946, and monthly and quarterly reports, Forms 41 and 41 (a) filed with the Board by American Airlines, Inc. prior to and including the date of oral argument before the Board;

* * * * *

7. Airline Traffic Surveys for September, 1946, March, 1947, September, 1947, March, 1948, September, 1948, March, 1949, and any similar surveys issued or made available to the parties by the Civil Aeronautics Board prior to the date of oral argument before the Board in this proceeding;

664 8. Recurrent Reports of Mileage and Traffic Data, of all Domestic Airline Carriers, 1945-1949, prepared by the Economic Bureau of the Civil Aeronautics Board, and any similar recurrent reports officially released by the Civil Aeronautics Board prior to the date of oral argument before the Board in this proceeding;

* * * * *

11. Letter of March 11, 1952 to the Civil Aeronautics Board advising it of change of name of Twentieth Century Airlines, Inc., to North American Airlines, Inc. and suggesting issuance of letter of registration in new name.

* * * * *

FLY
NORTH
AMERICAN
AIRLINES

INSIST ON
4-ENGINE

DEPENDABILITY
WITH THE
LEADING & LARGEST
AIRCOACH SYSTEM

N. York \$80*

Chicago \$70*

HONOLULU \$121.50

* Each Way R.T. Special

Low Fares to Other Cities

CALL COLLECT

TR-0711

Complimentary Meals
Stewardess Service
Free Ticket Delivery

"Fly Now—Pay Later"

ALWAYS CALL

NORTH AMERICAN

L.A.

TR-0711

631 S. OLIVE ST.

Hollywd.

GL-6141

1640 N. VINE ST.

Long Beach

L.B. 708971

San Diego

111 W. OCEAN BLVD.
Main 2006

342 S. BROADWAY

TR-0711

680

175

CAB.
DOCKET NO. 5774, 5928

EXHIBIT NO. AA 11

Return in 3 days to
New York Underwriters Insurance Co.
EMERSON L. DUFF
Resident Agent
1011 E. Bennett Avenue
GLENORA, CALIFORNIA



North American Air Lines,
521 W. 6th. St.,
Los Angeles, Cal.

700

May 4, 1953.

Mr. Clifton J. Stratton, Jr.
c/o Covington & Burling
Union Trust Building
Washington, D. C.

RE: North American Airlines, Inc.,
Dockets Nos. 5774 and 5928

Dear Mr. Stratton:

This will acknowledge receipt of late-filed exhibits Nos. AA-8A and AA-10 through AA-26 in the above-entitled proceeding.

You are advised that Exhibit AA-8A, offered in evidence at the hearing, was not received in evidence but was permitted to accompany the record as an offer of proof. Therefore, in accordance with the Examiner's ruling appearing on page 245 of the official record, the above-named exhibit will accompany the record as offer of proof.

You are further advised that exhibits AA-10 through AA-26 will be received in evidence in the above proceeding.

Very truly yours,

WALTER W. BRYAN,
Examiner.

CC: to all parties
WWBRYAN:MO

704

BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 5774

In the matter of the application of NORTH AMERICAN AIR-
LINES, INC., for authority to conduct its operations under
the name of North American Airlines, Inc.

Docket No. 5928

In the matter of an investigation pursuant to section 411 of
the Act of certain practices of NORTH AMERICAN AIRLINES,
INC.

BRIEF OF ENFORCEMENT ATTORNEY

to
EXAMINER WALTER W. BRYAN

* * * * *

718. There is no evidence in the record which shows
that North American adopted its name with intent or
design to trade upon the good will and business reputation
of American Airlines, nor is evidence of such intent neces-
sary to sustain a finding that the practice is unfair or decep-
tive or an unfair method of competition.

It is indeed novel, however, that North American should
adopt a trade name which so closely resembles that which
has been used by American for a number of years. North
American could have adopted a name so dissimilar that
any question of similarity could have been avoided, and
there would have been no tendency on the part of the public
to mistake one carrier for the other. There would have
been no opportunity to allege that North American by
selecting its name attempted to trade upon the good will
and business reputation which had been developed through
the years by American or that the public was unnecessarily
inconvenienced by the similarity of the names of the two
carriers.

* * * * *

EXHIBIT AA-12

C. A. B.

Docket Nos. 5774, 5928

Exhibit No. AA-12A is a North American Airlines ticket with a cover similar to that in NAA Exhibit 2, page 1, except as to serial number. Exhibit No. AA-12B is a North American Airlines ticket with a cover similar to that in NAA Exhibit No. 2, page 2, except as to serial number.

799

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
Washington, D. C.

NORTH AMERICAN AIRLINES, INC.

Docket Nos. 5774 and 5928

In the matter of the application of North American Airlines, Inc., for authority to conduct its operations under the name of North American Airlines, Inc., and an investigation pursuant to section 411 of the Act of certain practices of North American Airlines, Inc.

INITIAL DECISION OF WALTER W. BRYAN, EXAMINER

Served: June 19, 1953

Upon:

Hardy K. Maclay, 1317 F Street, N.W., Washington 4, D.C., for North American Airlines, Inc.

Clifton J. Stratton, Jr., 701 Union Trust Bldg., Washington, D. C., for American Airlines, Inc.

Robert M. Johnson, Office of Enforcement, Civil Aeronautics Board, Washington 25, D. C.

John J. Stowell, Bureau of Air Operations, Civil Aeronautics Board, Washington 25, D.C.

This decision shall become final 10 days after the date of service shown above and shall become effective upon the issuance of a Board order pursuant to Rule 28 of the Rules of Practice, unless within such 10-day period exceptions thereto are filed by one or more of the parties with the Docket Section, Civil Aeronautics Board, Washington 25, D. C., and served upon all other parties. If exceptions are filed within the period prescribed, briefs may be filed and served on all other parties within a further period of 10 days.

WASHINGTON QUANTICO PENSACOLA CORPUS CHRISTI

S. M. Rice Co.
Successor to "Youde's"
CIVILIAN AND MILITARY TAILORS
1342 G STREET N. W., WASHINGTON 5, D. C.
STERLING 3-6253; 3-6254

American Airlines Inc.,
718 - 14th St. N.W.
Washington, D.C.

FREE PARKING - CAPITAL GARAGE

PLEASE DETACH AND RETURN WITH YOUR CHECK.

| BILLING DATE | ITEMS | PURCHASES | MOSE. RETURNED OR CASH PAID | PAY LAST AMOUNT IN THIS COLUMN |
|--------------|---|-----------|--------------------------------|--------------------------------------|
| | Tailoring Charges for Two coats - M. Porter | 10.00 | | 18.00* |
| | Tailoring charges for two shirts - L. Hathaway | 8.00 | | |

| BILLING DATE | ITEMS | PURCHASES | MOSE. RETURNED OR CASH PAID | PAY LAST AMOUNT IN THIS COLUMN |
|--------------|---|-----------|--------------------------------|--------------------------------------|
| | Tailoring Charges for Two coats - M. Porter | 10.00 | | 18.00* |
| | Tailoring charges for two shirts - L. Hathaway | 8.00 | | |

S. M. Rice Co.
1342 G STREET N. W.
WASHINGTON 5, D. C.

WASHINGTON, D. C.
JAN 11 1953

682



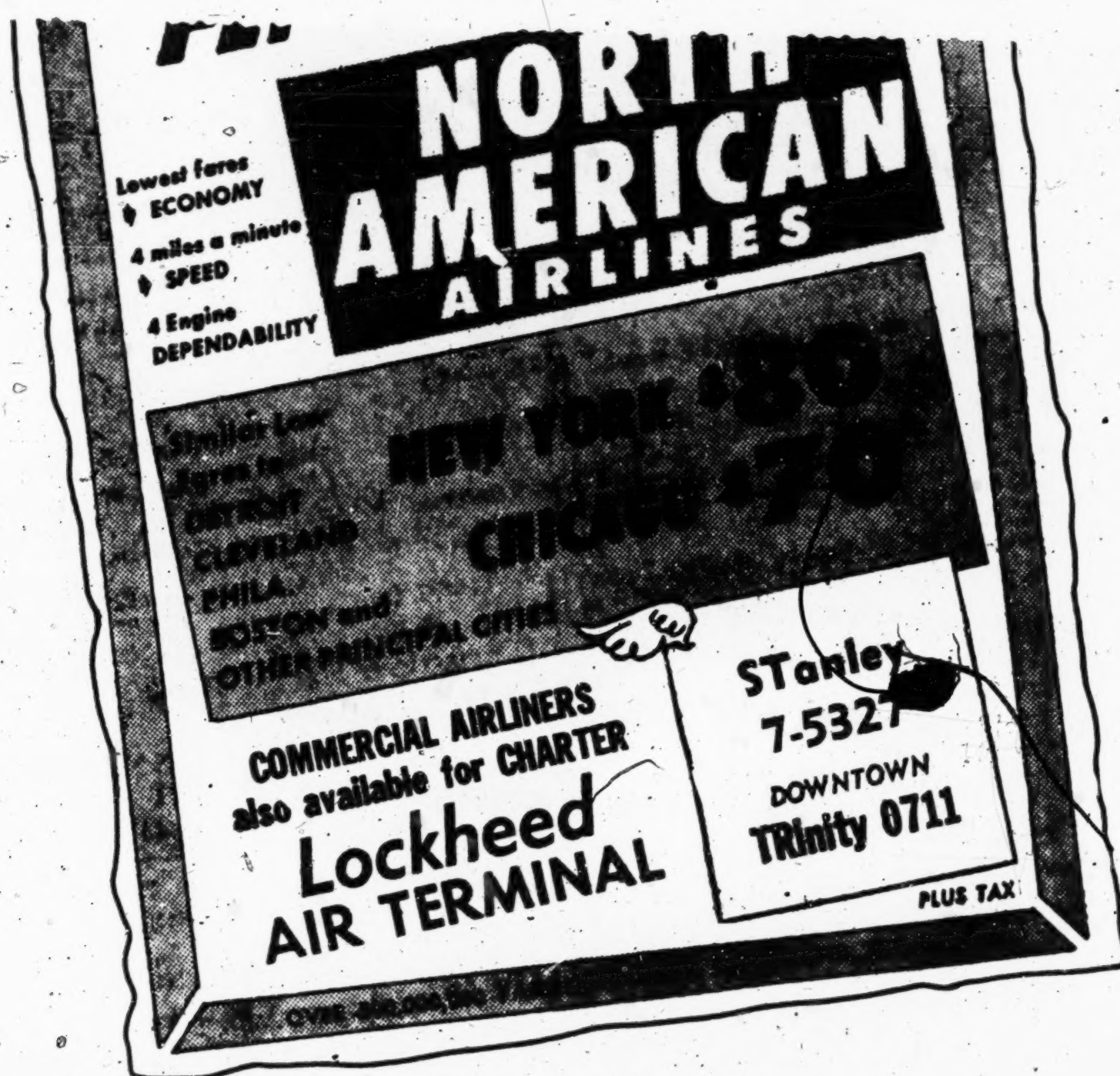
FLY  **4 ENGINE**
DOUGLAS AIRLINERS

NORTH AMERICAN AIRLINES

Lowest fares
↓ **ECONOMY**
4 miles a minute
↓ **SPEED**
4 Engine
↓ **DEPENDABILITY**

Similar Low
Fares to
DETROIT

NEW YORK



NORTH AMERICAN AIRLINES

Lowest fares
↓ **ECONOMY**
4 miles a minute
↓ **SPEED**
4 Engine
↓ **DEPENDABILITY**

Similar Low
Fares to
DETROIT
CLEVELAND
PHILA.
BOSTON and
OTHER PRINCIPAL CITIES

NEW YORK \$80
CHICAGO \$70

COMMERCIAL AIRLINERS
also available for CHARTER

**Lockheed
AIR TERMINAL**

Stanley
7-5327
DOWNTOWN
TRinity 0711

PLUS TAX

C.A.B.
DOCKET NO. 5774, 5928

EXHIBIT NO. AA 16

FLY NORTH AMERICAN WAY

FLY

WORTH THE AMERICAN WAY

Insist on 4 ENGINE Dependability

- Alitized Cabins
- Food Served Aloft
- Free Ticket Delivery
- Free Parking
- Nightly Limousine Service to Airport

NEW YORK \$80*

CHICAGO \$70*

*Each Way - on Round Trip Excursion

DAILY FLIGHTS TO:
HONOLULU

EXbrook
3-6791

FLY NORTH AMERICAN WAY

FLY NORTH AMERICAN WAY

Insist on 4 ENGINE Dependability

- Alitized Cabins
- Food Served Aloft
- Free Ticket Delivery
- Free Parking
- Nightly Limousine Service to Airport

NEW YORK \$80*

CHICAGO \$70*

*Each Way - on Round Trip Excursion

DAILY FLIGHTS TO:
SAN FRANCISCO, HONOLULU

Low Fares to Other Principal Cities

Located in
215 WILSHIRE BLVD. • SANTA MONICA

EXbrook
3-6791

ALL FARES PLUS TAX

OVER 500,000,000 PASSENGER MILES OF FAITHFUL SERVICE

FLY NORTH AMERICAN WAY

800

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
Washington, D. C.

NORTH AMERICAN AIRLINES, INC.

Docket Nos. 5774 and 5928

Concluded:

1. That the use of the name North American, or any combination of the word "American" by Twentieth Century Air Lines, Inc., constitutes an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act.

2. That the public interest requires that the application of Twentieth Century Air Lines, Inc., Docket No. 5774, for authority to engage in air transportation under the name North American Airlines be denied.

3. That an order be issued against Twentieth Century Air Lines, Inc., to cease and desist from using the name "American" in any combination of words to designate its name.

Appearances:

Hardy K. Maclay for North American Airlines, Inc.

Howard C. Westwood, Ernest W. Jennes, and Clifton J. Stettin, Jr., for American Airlines, Inc.

Robert M. Johnson, Enforcement Attorney

INITIAL DECISION OF WALTER W. BRYAN, EXAMINER

This proceeding arises as the result of the Board's order serial No. E-7107, dated January 28, 1953, in which it is ordered that an investigation be instituted to determine whether North American Airlines, Inc., formerly Twentieth Century Air Lines, Inc., in engaging in air transportation under the name of North American Airlines, Inc., North American Airlines, or North American, has been and is engaging in activities and practices in violation of section

411 of the Act; and if any such violation is established whether the Board should issue an order directing North American to cease and desist from such violations.

It is indicated in the record that on March 11, 1952, Twentieth Century Air Lines, Inc. (Twentieth Century) advised the Board that the corporate name of Twentieth Century had been changed to North American Airlines, Inc., (North American) effective March 3, 1952, and it requested the Board to change its records accordingly and reissue its letter of registration in the new name.

On August 19, 1952, the Board adopted an amendment No. 7 to Part 291 of its Economic Regulations, effective September 23, 1952. The above amendment added a new section, 291.28, *Business Name of Air Carrier*, which provided:

“On and after November 15, 1952, it shall be an express condition upon the operating authority granted by this Part and the letters of registration issued hereunder that the air carrier concerned, in holding out to the public and in performing air transportation services shall do so only in a name the use of which is authorized under the provisions of this section.

(a) Except as otherwise provided under paragraph (b) of this section, an air carrier may do business in the name in which its letter of registration is then issued and outstanding, including abbreviations, contractions, initial letters, or other minor variations of such name which are readily identifiable therewith.

(b) An air carrier may do business in such other and different name or names as the Board may by order permit, upon a finding that the use of such other name or names is not contrary to the public interest. Any such permission may be made conditional upon the abandonment of the use of the name in which its letter of registration is issued and outstanding, in air transportation service by the air carrier concerned, or otherwise be made subject to such reasonable terms and conditions as the Board may find necessary to protect the public interest.”

On October 6, 1952, North American timely filed an application under the above regulation for authority to conduct its operations under the name North American Airlines, Inc., in lieu of Twentieth Century Air Lines, Inc. Upon

consideration of this application the Board determined to institute the above described investigation: and by its order consolidated the above application, Docket No. 5774, with the investigation proceeding; Docket No. 5928, for hearing and decision.

American Airlines, Inc., (American) was permitted to intervene and participated in the proceeding. A hearing has been held and all parties given an opportunity to file briefs with the Examiner.

Issues.—The issue involved here is whether North American has been or is engaged in unfair or deceptive practices, or unfair methods of competition in air transportation, within the meaning of section 411 of the Act, by the use of the name North American Airlines, Inc., North American Airlines, or North American, and if any violation is established whether North American should be ordered to cease and desist therefrom; also whether the granting of the request in North American's application for leave to change its name to North American Airlines, Inc., would be contrary to the public interest.

Twentieth Century Airlines, Inc., was incorporated in North Carolina on May 4, 1946, and holds a letter of registration as a large irregular air carrier. On March 3, 1952, the above carrier amended its articles of incorporation so as to change its name to North American Airlines, Inc. Since on or about April 21, 1951, the above carrier has engaged in the air transportation of persons between, among other points, New York, Chicago, and Los Angeles, under the trade name of North American Airlines.

American Airlines, Inc., (American) the intervenor in this proceeding, was incorporated in Delaware on April 11, 1934, succeeding American Airways, Inc., which was incorporated under the laws of Delaware on January 25, 1930. American has continuously engaged in air transportation of persons, property, and mail since the above dates and has operated between, among other places, New York, Chicago, and Los Angeles as a scheduled air carrier.

American registered on July 27, 1948, the name "American Airlines" under the Federal Trademark Act, 15 U.S.C. 1051 et seq., on the Principal Register (No.

514294) of the United States Patent Office as a service mark used in connection with the furnishing of air transportation.

Since 1934 American has concentrated in its advertising the names "American" and "American Airlines" with the purpose of creating in the public mind an identity between the name American and its air transportation service. There were introduced in evidence samples of such advertising as "American Leading Airline," "Better by Air," "Best by American," "American to Detroit the Most Frequent Service," "American to Washington \$98 via DC-6 Airtourist Service," "American to New York 11 Nonstop Flagships," and "American's Convairs Are Coming."

The above type of advertising has appeared weekly on 251 billboards and in 142 newspapers throughout the country with a combined circulation of approximately 28,000,000. American has spent in excess of \$2,250,000 for the above type of advertising since 1949.

American has also advertised extensively in magazines and during the period between 1948 and 1952 it spent approximately \$3,800,000 for such advertising. It also advertises in the various cities served by American by means of display signs appearing at airports and in other public places. In 1940 American produced a sales movie entitled "The American Way," which has been shown to groups throughout the country, depicting its service and the comfort, speed and convenience of air travel. American is currently spending on newspaper and billboard advertising approximately \$600,000 annually.

804 An officer of American in testifying stated that in his opinion the extensive advertising of American service as being the leading airline in American air commerce had been accepted by the traveling public. He further stated that much of American's advertising is devoted to identifying American with a certain route structure and with a certain type of superior equipment.

The direct evidence of record consists of testimony of witnesses who, for the most part, are employed by American as ticket and reservation agents located at Los Angeles, Burbank, Chicago, and New York. There were also affidavits and written statements from ticket and reservation

agents received in evidence for the purpose of establishing whether the names "American" or "American Airlines" and "North American" or "North American Airlines" are confusing to the traveling public.

The above evidence generally involved numerous inquiries on the part of the public made to American employees concerning service, rates, routes, and schedules of North American under the mistaken impression that North American and American were one and the same airline.

An officer of American testified that he had received from employees under his supervision numerous inquiries indicating confusion between American Airlines and North American Airlines, and that his office had received numerous requests for collect telephone calls from people who were attempting to contact North American. It was established that American did not receive collect calls while North American did. The same witness stated that his office had received a telephone call from a representative of a trade union, complaining that an American sign was being painted by non-union painters, and upon investigation it was found that the sign was that of North American. There were instances of air passengers holding North American tickets attempting to check in for North American flights at American ticket counters—in fact, at the Burbank office this was a daily occurrence—and many of the passengers were still confused after an explanation had been made that American and North American were two different airlines. There were instances where North American passengers attempted to claim their baggage at the American counter; also other instances where prospective passengers insisted they were entitled to a discount for transportation on American because they held a "Buyers League Scrip Book." Upon an investigation by the passengers making the inquiries, it was learned that it was North American instead of American which offered a discount.

There were other instances of persons meeting incoming North American passengers who made inquiries at the American ticket counter at Burbank to determine time of arrival. Other inquiries were made of American agents at

Los Angeles concerning an \$80 fare from Los Angeles to New York, which the persons had heard advertised on television, and upon investigation it was found that it was North American they were referring to and not American. One witness testified that she had heard people state that they were under the impression that North American and American were the same or affiliated companies. Another witness for American testified that one person insisted that American flew from New York to Miami because she had heard a radio program to that effect, whereas the program in question was that of North American. There were instances where mail addressed to North American was delivered to American Airlines' office. Tradesmen have

806 dunned American for bills owed by North American and hotels have requested American's advice as to billing for hotel charges incurred by North American crews. A witness for American stated that at its Burbank office the president of North American, who is on duty at the North American ticket counter at Lockheed air terminal, informed her that many persons would stop at his counter and request tickets to Dallas, Oklahoma City, or Tulsa, points which North American did not serve, and he would realize that the passengers were confused and that they were under the impression it was American's ticket counter. The president further stated to the witness that if the passengers were destined to New York or Chicago he would do everything he could to "steal" them.

There were many other instances similar to those referred to above that need not be repeated here. In general, they indicate that certain confusion exists on the part of the public in distinguishing the services of the two airlines in question.

The witnesses who appeared and testified on behalf of North American were ticket agents from Burbank and Washington, D.C. Their testimony was to the effect that they had not experienced any great degree of confusion on the part of the public involving the similarity of names between American and North American. The agent at Burbank stated it was a common occurrence at his counter for persons to inquire about the services of other carriers

such as United and particularly the services of North Star—in fact, the witness had noticed a certain amount of confusion existing on the part of the public between North American and North Star. Another witness for North American stated that his experience had been that the majority of customers made inquiries concerning destinations of the various carriers and were not particularly confused about the similarity of names of the carriers.

807 *Discussion.*—Section 411 of the Civil Aeronautics Act empowers the Board to determine whether any air carrier or ticket agent has been engaged or is engaging in unfair or deceptive practices, or unfair methods of competition in air transportation or the sale thereof, and if such is found to exist the Board is empowered to order discontinuance of such practices.

This case finds no precedent in the Board's decisions. Therefore, one must look for guidance to the decisions of the courts in their application of unfair trade practices as set forth under section 5 of the Federal Trade Commission Act, which is essentially the same as section 411 of the Civil Aeronautics Act. The Federal Trade Commission has been given the jurisdiction by statute over unfair competition in the common law sense of the term and also under the statutory language as defined "any unfair method of competition or unfair or deceptive act or practice in commerce." It is noted that the word "act" in the Federal Trade Commission Act has been omitted in section 411 of the Civil Aeronautics Act.

The courts have said that the unfair trade practice law is for the protection of the public and not for the experts, but rather for "the vast multitude which includes the ignorant, the unthinking, and the credulous, who in making purchases do not stop to analyze but are governed by appearance and general impressions."¹

The most common form of unfair competition is the imitation of a trade name, trade symbol, or device by a competitor. This may be a family name or the name of a corporation, labels, or deceptive packaging. In the early history

¹ See *Florence Mfg. Co. v. J. C. Dord & Co.*, 178 F. 73; *Stork Restaurant, Inc., v. Sahati et al.*, 166 F. 2d 348.

of trade relationship, as indicated by the early legal cases, it included unfairness, dishonesty, taking unfair advantage of a rival, misrepresentation, and defrauding the public. It is also noted that running through all of these early cases were the ethical element standards.² One of the first court cases involving a trade-mark or trade name in American courts was *Taylor v. Carpenter*,³ Story 458, in which an English concern complained that the name and other distinguishing devices on its spools of thread had been copied. Judge Story said that the case was one of unmitigated and designed infringement of the rights of the plaintiff for the purpose of defrauding the public and taking from plaintiff the fair earnings of their skill, labor and enterprise.

As heretofore stated, the name under which one does business may be a family name, a descriptive name, a fanciful name, or a geographical name. In this case the word "American" is used to designate a particular airline and as such is subject to exclusive use, although it is a geographical term. The courts have held that where the use of a name has been given significance or other meaning, such meaning is called a "secondary meaning" and the statute of unfair competition gives such name a property right.³

In the case of *Hudson Tire Co., Inc. v. Hudson Tire & Rubber Corporation et al.*, 276 F. 59, the court stated that the word "Hudson" as applied to tires had obtained a secondary meaning, referring to plaintiff's merchandise, and the fact that defendant had secured its corporate name from the State of New York did not authorize it to use the name "Hudson" in connection with such merchandise.

809 The courts have likewise held that in looking for a secondary meaning in a trade-mark, it is controlled by the fact that such a meaning has been acquired in the minds of the public rather than by the time it has taken for that fact to be established.⁴

Another case in point is that of *American Products Co.*

² 2 Mims' Unfair Competition, 4th ed., 1947.

³ *Standard Paint Co. v. Rubberoid Roofing Co. et al.*, 224 F. 695.

⁴ *Barton et al. v. Rex-oil Co., Inc.*, 2 F. 2d 402.

vs. American Products Co., 42 F. 2d 488. It is noted that one of the above companies was a Delaware corporation and the other one a Michigan corporation. The court said, in part:

“Assuming, for the purposes of this opinion, that the name ‘American Products Company’ should be regarded as a geographical name indicating products made in America, rather than a somewhat fanciful name not intended to denote the place of manufacture of such products, it is well settled that when a person has adopted, as the name of a business, a term originally geographical, and, by his efforts and expenditures, has developed a reputation and good will for such business and its products, so that such name has come to mean, in the minds of the general public, that particular business and its products, such name thereby acquires a secondary meaning, as indicating such business, and its owner is entitled to protection, in its use, by a court of equity.”

In the case of *American Radio Stores, Inc. v. American Radio and Television Stores Corp.*, 150 A. 180, the court stated:

“Those words (radio and stores) are purely descriptive and, when used by the complainant, have attached to them no meaning of a secondary nature. But when the word ‘American’ is used in conjunction with them, a distinguishing mark is introduced and the complainant is entitled to be protected in its use of that distinctive feature of its name.”

In the case of *Delaware L. & W. R. Co. v. Lackawanna Motor Freight Lines*, 175 Atl. 905, the court held that the rights of the plaintiff were based on a secondary meaning acquired by its use in the transportation business, and its use by defendant was a device to deceive the public, although the court held that fraudulent intent need not necessarily be shown to invoke the aid of the court.

810 Another case in point is *American Thread Co. vs.*

North American Thread Co., Inc., 33 F. Supp. 616, where the court held that a newcomer operating under a similar name to a company already in the business was an act of unfair competition.

Another pertinent case is that of *Womble v. Parker*, 67 S.E. 2d 133, which involved a newcomer into a business wherein it attempted to advertise its products under a trade name similar to one already in use by its long-established competitor. The court said, in part:

“While geographical names and words which are merely descriptive are not generally the subject of exclusive appropriation as trade-marks or trade names, such names and words when used so long and exclusively by a trader, manufacturer or producer that they are generally understood to designate his business or merchandise, may acquire a secondary signification or meaning indicative not only of the place of manufacture, but of the name of the manufacturer or producer, or of the character of the product, so that the name or title thus employed, including the geographical name and descriptive words, may be the subject of protection against unfair competition in trade, and authorize equity to enjoin a newcomer competitor from the appropriation and use of a trade name or trade-mark bearing such resemblances to those of the pioneer as to be likely to produce uncertainty and confusion, and to pass off the goods or business of one as those of another.”

It is clear from the foregoing that a geographical term used in a business name may acquire a secondary meaning by actual use and upon which the owner may create goodwill in its business relationship with the public. Thus such a name becomes a valuable asset and a business advantage.

⁵ Other cases in point are: *Phillips v. The Governor & Co. of Adventurers of England trading into Hudson Bay*, 79 F. 2d 971; *Lincoln Motor Co. et al. v. Lincoln Automobile Co.*, 44 F. 2d 812; *Finchley, Inc. vs. Finchley Co., Inc.*, 40 F. 2d 736; *Western Auto Supply Co. v. Knox*, 93 F. 2d 850.

Therefore, in such instances the trade name becomes of a pecuniary value or a property right, and the courts have consistently held that such rights are entitled to the protection afforded by the courts.

811 There can be no dispute that American Airlines is the prior user of the name "American" as between it and North American, as American has used the above name since 1934 and its predecessor used the name prior to that time, whereas North American has used its name only since April, 1951. American has consistently over the years promoted the use of the term "American" in its advertising and public relation work. Since 1948 American has spent over \$6,000,000 for advertising in newspapers and magazines alone. Respondent argues on brief that in order for the term "American" to have acquired a secondary meaning as used by American Airlines it must have been exclusively used during the entire period in which the secondary meaning was being established, and the respondent further argues that American was not the exclusive user of the name "American" during this time.

The courts have held that to establish a cause of action for unfair competition it is not necessary to prove an exclusive right in plaintiff, i.e., that no one else has used the trade name in the past or that no one else is presently using it—rather the issue is what does the trade name as used by the owner mean to the public.⁶ The public has accepted the term "American" in air transportation as meaning American Airlines, Inc., and the fact that other airlines may or may not have used the word "American" as constituting a dominant part of their business name is of no significance in this proceeding.

Upon consideration of all the facts, and in view of the court decisions pertaining thereto, it is concluded that the name "American" and "American Airlines" used in connection with air transportation has acquired a secondary meaning as identifying American Airlines, Inc.

812 The Supreme Court has said that the aim in the use of trade-marks is to convey to the minds of the

⁶ *Thomas A. Edison, Inc., v. Sholkin*, 69 F. Supp. 176.

public, or potential customers, the desirability of the services or commodity upon which the mark appears, and once this is attained the trade-mark becomes something of value and whatever tends to dissociate the trade name or mark in the public mind from the goodwill it identifies lessens its value and may destroy it altogether.⁷ Since it has been concluded that the trade name "American" used by American Airlines has acquired a secondary meaning and that good-will has been created in the use of that name, it appears that such name is entitled to protection against its use by another person engaged in air transportation under a similar name which would have a tendency to confuse the public.

One of the important factors in a case of this kind arising under section 411 is whether the public is being deceived or confused and thus affecting the public interest in air transportation. The court stated in the case of *Anheuser-Busch, Inc. v. Budweiser Malt Products Corporation*, 287 F. 243, that the fundamental question in cases of trade-marks or unfair competition is whether the public is being misled and deceived so that the defendant is in effect taking advantage of the good-will and business reputation of another who has built it up through service or advertising.⁸

There are numerous examples in the record indicating confusion between American and North American Airlines on the part of the public. A number of witnesses who were ticket or reservation agents for American testified that they had received numerous inquiries from the public, indicating to them that confusion existed in the minds of the persons making the inquiries. Each agent for American in the Los Angeles area that testified stated he had received on an average of two or more such inquiries per week, and it is reasonable to assume that the other employees in that area received an equal number of

⁷ See *Mishawaka Rubber & Woolen Manufacturing Co. v. S.S. Kresge Co.*, 316 U.S. 203.

⁸ See *United Drug Company v. Theodore Rectanus*, 248 U.S. 90.

inquiries, which would make the total over 200 per week in the above area alone, not to mention the other points located on American and North American's systems.

Respondent has raised the point as to whether inquiries contained in sworn affidavits by American employees should be given any consideration since, for the most part, such evidence is hearsay and the respondent was not given an opportunity to cross-examine the person making the statement. The above evidence was not offered to prove the truth of such statements but rather the extent of confusion which may exist in the minds of members of the public. The mere fact that such inquiries were made is some indication that the persons making the inquiries must have been confused by the similarity of names.

The courts have consistently held that such evidence in cases involving infringement of trade-marks is admissible. In the case of *S.C. Johnson & Son, Inc. v. Johnson*, 28 F. Supp. 744, the court said:

"There is considerable testimony which has been offered by the plaintiff purporting to show inquiries made by prospective purchasers. It is objected that such inquiries are hearsay. Without this type of proof, it would be difficult to show confusion. It seems to me it is competent as showing the state of mind of the prospective purchaser."

As to whether the incidents included in the affidavits submitted in evidence were made by passengers or prospective passengers on either of the two airlines involved 814 is of no significance since a part of the entire public are prospective passengers at one time or another. The courts have held that misdirected mail or complaints between companies with similar names was evidence of confusion.

The type of inquiries indicating confusion involved in this proceeding, which have heretofore been discussed, is

² See also *United States v. United Shoe Machinery Corporation*, 89 F. Supp. 349; *Federal Trade Commission v. Cement Institute et al.*, 333 U.S. 683.

typical of those occurring to the average member of the public. Naturally, such inquiries were not made by persons who are frequent travelers by air or well informed on aviation matters but rather the uninformed, and it is the interest of the uninformed that the Board is required to protect from confusion because of similarity of names.

There is no evidence of record that North American adopted its name with intent to deceive the public or trade upon the good-will and business reputation of American, or that American has been injured by such operation. Such evidence is not required to support a finding of unfair competition. The courts have consistently held that in cases involving violation of trade-marks the right of injunction depends not on the fact that the purchaser has been deceived but rather on the fact that the public may be deceived if such acts of confusion are permitted to continue. The proof that confusion has already existed adds to the likelihood of continued deception.¹⁰

815 There is no question but what American has acquired during the past 20 years through its constant efforts a good-will in its use of the name "American" or "American Airlines," which has become a valuable asset to be protected. However, an action for infringement of American's trade name can find its remedy in the courts. Section 411 was not designed for the purpose of protecting the private rights of an individual carrier except to the extent of regulating competition between the various air carriers to assure fair competition and thereby maintain a sound economic transportation system; also, equally im-

¹⁰ *J. C. Penney Co. v. H. D. Lee Mercantile Co.*, 120 F. 2d 949; *Ralston Purina Co. v. Saniwax Paper Co. et al.*, 26 F. 2d 941; *Wisconsin Electric Co. v. Dumore Co.*, 35 F. 2d 555; *Henry Muks Co. v. Farm Craft Foods, Inc., et al.*, 37 F. Supp. 1013; *United Drug Co. v. Obear-Nester Glass Co.*, 111 F. 2d 997; *Pep Boys—Manny, Moe & Jack, Inc. v. Federal Trade Commission*, 122 F. 2d 158. *American Home Benefit Assn., Inc. v. United States Benefit Assn., Inc.*, 125 P. 2d 1010; *United Lace & Braid Mfg. Co. v. Barthels Mfg. Co.*, 221 F. 456.

portant, the Board was given the responsibility of safeguarding the public interest against unfair and deceptive methods of competition.

North American is a newcomer in the field of air transportation as compared to American's operations; and it should have known that the similarity of names between North American and American would have the capacity to confuse the public as to the true identity of the carriers. There are numerous instances of record where the public has been confused and inconvenienced by this similarity of names. The courts have consistently upheld the public interest as being the foremost issue in cases involving violation of trade-marks and have granted injunctive relief without proof of fraud, deception, or injury to the owner of the trade-mark.

The task would not have been a difficult one for North American to have adopted another trade name which was different from the names of other air carriers in operation and thereby avoid the tendency on the part of the public to mistake one carrier for the other.

In view of the public confusion which has arisen and may increase in the future as air transportation becomes a more accepted mode of travel, and the services rendered by the carriers become more alike as well as the aircraft itself, it is in the public interest that the identity of the carrier be readily distinguishable by the public. Therefore, the continued use of the name "North American" by Twentieth Century is so similar to the trade name "American" as used by American Airlines, Inc., as to constitute an unfair and deceptive practice as well as an unfair method of competition, and it is so found.

In order further to protect the public interest against such unfair methods of competition it is found that a cease and desist order should be issued by the Board against the use of the name "North American" by Twentieth Century in the manner hereinafter set forth.

Findings.—In view of the foregoing and in consideration of all the facts of record, it is found:

1. That the use of the name "North American Airlines, Inc.," "North American Airlines," "North American," or

any combination of the word "American" by Twentieth Century Airlines, Inc., constitutes an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act.

2. That the public interest requires that the application of Twentieth Century Airlines, Inc., Docket No. 5774, for authority to engage in air transportation under the name North American Airlines, Inc., be denied.

3. That a cease and desist order be issued against Twentieth Century Airlines, Inc., its successors, assignees, representatives, agents, officers, and employees, to cease and desist doing business in air transportation under the name North American Airlines, Inc., or any variation of the name "American."

* * * * *

1036

E-7870

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD

Washington, D. C.

Served: Nov 4 1953

Docket Nos. 5774 and 5928

North American Airlines Section 411 Proceeding

Decided: November 4, 1953

North American Airlines, Inc. (Twentieth Century Airlines, Inc.) ordered to cease and desist from engaging in air transportation under the names "North American", "North American Airlines", "North American Airlines, Inc.", or any combination using the word "American".

Appearances:

Hardy K. Maclay and Walter D. Hansen for North American Airlines, Inc.

Howard C. Westwood, Ernest W. Jennes and Clifton J. Stratton, Jr., for American Airlines, Inc.

Robert M. Johnson, Enforcement Attorney.

OPINION

By the Board:

This proceeding involves an investigation instituted by the Board to determine whether North American Airlines, Inc., formerly Twentieth Century Airlines, Inc. (respondent) has been and is violating Section 411 of the Act by engaging in air transportation under the name North American Airlines, Inc., North American Airlines, or North American.¹ The order instituting the investigation 1037 consolidated into it an application by respondent, filed under section 291.28 of the Economic Regulations, for authority to conduct its operations under the name North American Airlines, Inc., rather than as Twentieth Century Airlines, Inc., the name in which respondent holds its letter of registration as a large irregular air carrier. American Airlines, Inc. (American) was granted leave to intervene.²

After due notice a public hearing was held before Examiner Walter W. Bryan who has issued his Initial Decision. In it he found (a) that respondent's use of the name North American Airlines, Inc., North American Airlines, North American, or any combination of the word American constitutes an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act, (b) that the public interest requires denial of respondent's application to engage in air transportation under the name North American Airlines, Inc., and (c) that respondent, its successors, assignees, representatives, agents, officers and employees should be ordered to cease and desist from engaging in air transportation under the name North American Airlines, Inc., North American 1038 Airlines, North American, or any combination of the word American. Respondent has excepted to the Initial Decision.³ The Board has heard oral argument, and the case now stands submitted for decision.

¹ Order No. E-7107, dated January 28, 1953.

² Order No. E-7174, dated February 19, 1953.

³ Respondent has filed a brief in support of its exceptions. American filed a statement in lieu of exceptions approving

Upon consideration of the entire record, we agree with the Examiner's ultimate findings as set forth above. Those portions of his Initial Decision which we adopt as our own are attached hereto as an appendix. We shall discuss herein some of the contentions raised in respondent's exceptions, and in so doing we shall supplement the findings and conclusions contained in the appendix.

1. Respondent presents several exceptions attacking the sufficiency of the evidence of record to establish that respondent has caused substantial public confusion between itself and intervenor by using the names North American, North American Airlines, or North American Airlines, Inc. The Examiner found that such confusion exists by reason of the similarity between North American and the word American as used by intervenor. We concur in this finding. In addition, we find that substantial public confusion exists due to similarity between respondent's names and the name American Airlines. Evidence supporting these findings is partially summarized in the appendix. We have examined the evidence in the light of respondent's attacks upon both its weight and its admissibility, as discussed below, and have determined that the record amply supports our findings.

Respondent assails both the admissibility and the weight of evidence of confusion introduced in the form of written statements by certain American reservations and ticket office employees who were not called as witnesses. It is true that virtually all of the evidence of public confusion in the Chicago area is of this nature. But the finding of substantial confusion is required by the abundant testimony and written statements as to public confusion in the New York and Los Angeles areas personally observed by at least seven⁴ witnesses who were extensively cross-examined

the Examiner's ultimate findings, with a brief to the Board in support of its position. Counsel for the Board's Office of Enforcement filed no exceptions but requested the Board to consider his brief to the Examiner.

⁴ Witnesses Newkirk, Perry, Rowley, Avery, Heide, Houek and Reynolds; also witness Burg.

upon their testimony and statements. In finding substantial public confusion, we do not depend or rely upon the corroborative value of the evidence respondent thus assails. Indeed, all our findings and conclusions in this proceeding are based only upon evidence given by persons appearing as witnesses and available for cross-examination.

2. Respondent contends that the Examiner improperly relied upon evidence of confusion on the part of persons who were not shown to have been prospective buyers of air transportation at the time they evinced confusion. Such evidence related to attempts of merchants, hotels, and others to hold American Airlines answerable for the obligations or acts of respondent. Respondent views our inquiry as confined to the question of whether *shoppers for air travel* will be confused, and asserts that such confusion is not established by the evidence in question.

Even assuming that our concern is directed only to confusion of prospective passengers,⁵ evidence of confusion of members of the public not so identified does not lack probative force. There is no reason to believe that those who as creditors confused respondent with intervenor are more prone to such confusion than prospective air travellers. The evidence here challenged by respondent corroborates the direct evidence of confusion on the part of the travelling public. Indeed, such creditors may be themselves prospective air travellers.

3. The bulk of the confusion shown in the record was on the part of persons reasonably identified as prospective or actual purchasers of air transportation. In attacking this evidence, respondent argues that the showing of confusion due to similarity of names actually represented confusion which the witnesses had imputed to, rather than observed

⁵ Obviously the public to whose interests we must look herein does not consist solely of individuals contemplating purchase of air transportation. For example, the record shows that a person whose sole transportation interests at the time may lie in the journey of another can experience considerable inconvenience if under a misapprehension as to the carrier's identity and time and place of arrival.

in, the public. Respondent claims that the public behavior observed by these witnesses, properly interpreted, indicates either (a) no confusion on the part of the traveller or caller at all, or (b) confusion involving some carrier other than respondent, or (c) confusion between respondent and
1041 intervenor not attributable to a similarity of names.

(a) The record contains few instances where it would be reasonable to conclude that the caller was not confused at all. Respondent would so describe persons who presumably were trying to telephone respondent but who in fact telephoned American possibly because of a wrong number. But absent a showing of a confusing similarity of telephone numbers, receipt by American of telephone calls intended for North American is itself some evidence of a confusion due to similarity of names. Respondent also regards as not confused persons who apparently called American intentionally and who, according to respondent, did so merely because they regarded American as a good source of desired information. While there is no dispute that such calls are received by American, very few of the instances described by the witnesses were even arguably of this nature.⁶ The evidence as a whole is convincing that in almost all instances offered to show confusion of the public, confusion was definitely or very probably present.

(b) In certain instances respondent does not deny that confusion may have been present, but argues that the caller or traveller whom the witness observed may have confused American with some air carrier other than North American. This argument is inapplicable to a major portion of the
1042 cases reported by the witnesses, because the conduct of the persons observed directly exhibited that North American was involved. The argument is unpersuasive in other instances which were indirectly linked to

⁶ This finding is made with full cognizance of certain evidence in the record showing that intervenor does receive general inquiries regarding air transportation where there is no confusion. Respondent improperly attempts to classify as inquiries of this character requests which we conclude involve confusion.

North American by references to North American flight numbers or advertising, including in one case the name of a radio entertainer sponsored by respondent. It is true that the link to respondent is imperfect where it consisted merely in references by the caller to special fares, particular destinations and distinctive features of service shared by carriers other than respondent. However, such cases are overshadowed by the evidence in which North American's role in the confusion is obvious.

(c) Respondent disputes the causal relationship between the similarity of names and the public confusion between the carriers using such names. Respondent cannot successfully challenge such a relationship on this record. That there is in fact a similarity between the names of respondent and intervenor is obvious, and where the evidence shows members of the public have confused respondent with intervenor, the implication is strong that such confusion flows from the similarity. The record will not permit us to draw a contrary inference. It has not been shown that comparable public confusion exists between intervenor and a carrier with a clearly dissimilar name, nor between respondent and a carrier with a clearly dissimilar name. Moreover, respondent is unable to point to any prevailing circumstance more likely than the similarity of the parties' names to account for the confusion between itself and intervenor. In one case, in which a letter addressed to American Airlines at the Lockheed Air Terminal in Burbank, California, was misdelivered to respondent's counter at the same terminal, respondent urges as the probable reason that the letter bearing the name of an American Airlines' employee, Miss Newkirk, beneath that of American Airlines, was misdelivered because respondent also had an employee named Newkirk. But this single instance affords respondent little aid in view of the evidence that there were other instances of letters both misdelivered and misaddressed as between American Airlines and North American. In these cases there was no evidence of similar personal names, and the conclusion that the similarity in the carriers' names was the causal factor can hardly be avoided.

4. Respondent contends that any instances which may

show a confusing similarity of names are too few to support a finding that such confusion is substantial or widespread. Respondent attacks a statement of the Examiner that it would be reasonable to assume on the basis of the evidence that American Airlines' personnel in the Los Angeles area receive 200 inquiries a week involving confusion on the part of the public. Respondent asserts that the evidence shows there were 8 instances a week of allegedly confusing inquiries received by American Airlines in that area, including only one which respondent concedes may have in fact involved actual confusion due to similar names. Respondent thus contends that any confusion caused by the similarity of names is *de minimis*.

The fact is that such confusion has been shown by the evidence of record to be substantial. We need not determine whether to endorse the precise numerical estimate of the Examiner, but we must reject respondent's assertion that American Airlines' Los Angeles personnel received only 8 inquiries per week involving confusion. That figure refers to certain reports by American Airlines' personnel committed to writing under the instructions of their supervisor who testified that for some time past instances of confusion with respondent had been frequently brought to his attention by his subordinates. He also testified that the reports, including those made by other witnesses, were representative of such instances; that some reports which he did not consider completely illustrative of the problem were discarded; that the instructions did not call for reporting all instances as that would have been an impossibility, since the personnel in question were busy answering telephones and handling many customers; and that his instructions called for reports of specific instances of unusual confusion or of a particular type of confusion which had happened repeatedly. The testimony of the American Airlines' ticket counter and telephone reservation personnel in Los Angeles and New York indicates the frequency of the confusion, or of one particular type of confusion, observed by individual witnesses as daily, practically daily on the night shift, three or four times a week, five or six in a five-day week, three or more a week, etc.

Such indications are cumulative rather than duplicative as to number, and since the witnesses testified as to observations made in work performed by them as a part of a much larger force also so occupied, their observations can be taken to represent only a small part of such occurrences.

This is confirmed by the testimony of American's 1045 supervisory witnesses from New York and Los Angeles, that public confusion involving respondent had come to their attention for some time as a problem which they encountered as supervisors.

5. Respondent has taken the position that, apart from the question of confusion, we cannot find a violation of section 411 herein because the word American as used by intervenor in air transportation did not acquire a secondary meaning referring to intervenor. We concur in the Examiner's finding and conclusion to the contrary. The evidence establishes that intervenor has long engaged in extensive advertising of its services in the name of "American". This practice has helped to instill in the minds of the public the notion that the word "American" when used in connection with domestic air transportation denotes American Airlines. This is dramatically illustrated by the fact that intervenor has been and is commonly referred to in news items in the public press as American. Where, as here, the record shows that the public press identifies "American" with the intervenor, and believes that the reading public makes the same identification, we find strong evidence of secondary meaning in the word "American."

In finding the secondary meaning, we have not overlooked the recent use of the word American in the name of the sectional local service carrier All American Airways, which has since changed its name to Allegheny Airlines. Nor have we overlooked the recent use of the word American in the name of the irregular carrier Air America, 1046 against whom an enforcement proceeding⁷ involving its name is now pending before us. We have also considered the use of American in the name Pan American World Airways. There, the use occurred in the separate

⁷ Docket No. 6078.

field of international and overseas air transportation, from which intervenor is wholly excluded except to the extent of serving Mexico City. The fact that intervenor in its long history of extensive advertising may have, at times, emphasized the word "flagship" more than it emphasized its name does not destroy the continuity of its use of that name. There is no doubt that the word American, used in connection with domestic air transportation, is widely known as meaning the intervenor, and that the phrase American Airlines is also understood to refer to intervenor and not to denote the airlines of this nation or continent generally.

Even if respondent were correct in its arguments as to secondary meaning, we do not interpret section 411 so that respondent would prevail. We do not believe that, in a case like the present, secondary meaning must be proven in order to protect the public against a clearly demonstrated and substantial public confusion. And this is certainly true where, as here, respondent has adopted a corporate name confusingly similar to the earlier adopted corporate name "American Airlines."

Respondent asserts that its use of its name has not been shown to have been fraudulent. Respondent did not commence and develop its operations as North American Airlines under circumstances of time, place, or nature and scale of operations in which confusion with intervenor would have seemed a remote prospect, but rather changed its name from Twentieth Century Airlines to North American Airlines at a time when American Airlines was universally known in air transportation circles and when operations between major cities served by American must have loomed large in respondent's contemplation of its future activities. Under the circumstances, it was obvious that the similarity of names might well cause confusion. Respondent must be presumed to have intended the reasonably foreseeable consequences of its own acts. We find that respondent's use of a confusingly similar name was not accidental or inadvertent, but rather was knowing.⁸

⁸ There is some evidence which, literally read, would support a finding that respondent used its name in order to

We are well aware that an order requiring respondent to cease and desist using the name under which it has been engaging in air transportation is a serious sanction which necessarily involves disturbance and loss to the carrier. We do not impose such a measure lightly. But the record is convincing that the public interest requires this action in order to prevent further public confusion between respondent and intervenor due to similarity of names. The main-

1048 tenance of high standards in dealing with the public is expected of common carriers, and the public has a right to be free of the inconveniences which flow from confusion between carriers engaging in the transportation of persons by air. The speed of air travel may well be diminished when passengers check in for flights with the wrong carrier, or attempt to retrieve baggage from the wrong carrier, or attempt to purchase transportation from the wrong carrier, or direct their inquiries to the wrong carrier. Friends, relatives or business associates planning to meet passengers or seeking information on delayed arrivals are subject to annoyance or worse when confused as to the carrier involved. The proper handling of complaints from members of the public is impeded by confusion as to the carrier to whom the complaint should be presented. The transportation itself may differ from what the confused purchaser had anticipated (e. g., in terms of equipment),

secure for itself prospective passengers of intervenor. Moreover, there is other evidence, introduced by respondent, clearly showing the regular use by respondent of misleading advertising concerning itself. This evidence shows that respondent's radio commercials regularly contain the words "North American—one of the nation's four great airlines". Clearly the word great, used to describe a commercial enterprise such as an airline, would normally be understood in its usual sense of big or large. By no objective criteria is the quoted claim, so interpreted, even close to being true of respondent. American Airlines, however, by most if not all tests of size is in fact one of the four largest domestic air carriers, a group commonly referred to as the "Big Four".

even though the time and place of arrival may be about the same. It is obvious that public confusion between air carriers operating between the same cities is adverse to the public interest, and we have determined that the public should be protected from the effects of the confusion shown on the record by eliminating what we find to be the 1049 cause of such confusion.⁹

We have considered the remaining contentions of respondent in support of its exceptions and find them without merit.¹⁰

⁹ Respondent cites certain orders issued in Docket No. 4776 (Ralph Cox, Jr. d/b/a Ocean Air Tradeways) as a precedent under section 411 to the effect that actual injury to the intervenor must be shown before the Board can act under that section. We do not so read these orders (Nos. E-4990 of December 29, 1950, E-5897 of November 28, 1951, and E-6778 of September 10, 1952), for it appears that the complainant in that case, Overseas National Airlines, proceeded on a claim of purely private rights but failed to allege facts showing any injury from violation of such rights. Furthermore, substantially all of the business of the other carrier, United States Overseas Airlines, was under contracts with the military establishment, rather than with the general public. These orders by no means imply that where the public interest may be adversely affected by a confusing similarity of names the Board before acting under section 411 will require a showing of actual injury to the private complainant who asserts a right in such a name.

¹⁰ Respondent excepts to the Examiner's statement that the issues herein include the question of whether granting respondent's application for leave to change its name to North American Airlines, Inc., would be contrary to the public interest. Respondent asserts that under the order instituting the investigation the sole issue was stated to be the violation of section 411 by the use of the name North American, etc., that this delineation of the issues was reaffirmed both in an order denying intervenor's motion to clarify and broaden the issues and in the prehearing confer-

Respondent also excepts to the Examiner's statement that the courts have consistently upheld the public interest as being the foremost issue in cases involving violation of trade-marks and have granted injunctive relief without proof of fraud, deception or injury to the owner of the trade-mark. We have not adopted the Examiner's statement and accordingly need not comment further on that subject.

Accordingly, in view of the foregoing and upon consideration of the entire record we find:

1. That American Airlines and North American Airlines are in competition in air transportation;

2. That American Airlines was incorporated under that name before North American adopted the trade name of, or changed its corporate name to, North American Airlines; that the term "American" had acquired a secondary meaning before North American adopted that trade name or so changed its corporate name, and such secondary meaning continues to exist;

1050 3. That the substantial public confusion found herein is likely to continue;

4. That the use by respondent of the name "North American Airlines, Inc.", "North American Airlines", "North American", or any combination of the word "American"

ence report, and that the Examiner's addition of a new issue after hearing deprived respondent of notice. There is no doubt that respondent's application was consolidated herein by the order initiating the investigation under section 411 (No. E-7107 of January 28, 1953) and was referred to as such in the prehearing conference report. However, we agree with respondent that the only issue in this proceeding is whether there has been a violation of section 411. For, under the regulation regarding change of name under which respondent's application was filed, as interpreted by the order initiating the investigation mentioned above, a denial of the application may be ordered only if a violation of section 411 is shown. Thus the issues under respondent's application and the Board's order of investigation herein are identical.

constitutes an unfair or deceptive practice and an unfair method of competition within the meaning of Section 411 of the Act;

5. That the public interest requires that the application of respondent, Docket No. 5774, for authority to engage in air transportation under the name North American Airlines, Inc., be denied;

6. That respondent and its successors, assignees, representatives, agents, officers, and employees should be ordered to cease and desist from engaging in air transportation under the name "North American Airlines, Inc.", "North American Airlines", "North American", or any combination of the word "American".

An appropriate order will be entered.

Ryan, Chairman, Denny, Vice Chairman, Lee and Gurney, Members of the Board, concurred in the above opinion. Adams, Member, filed the attached dissenting opinion.

1052 Adams, Member Dissenting:

I dissent from the action taken by the majority since I do not agree with their application to this case of the law of unfair competition nor with the particular sanction they have imposed upon North American Airlines, Inc. I feel that neither our Office of Enforcement nor the intervenor, American Airlines, Inc., has successfully borne the burden of proving the existence of unfair competition since in my view, although some public confusion has been demonstrated, I do not agree that it is substantial, or more than temporary.

As I read the leading cases on the subject of unfair competition, I feel that the error made by both the examiner and the majority arises from their tendency, on the one hand, to ignore the basic common law of competition and that of secondary meaning; while on the other hand they over emphasize the gullibility of the average purchaser in this country and magnify the significance and degree of public confusion shown on the record of this case. With this as a basis, the majority concludes that the name "American" has acquired a secondary meaning in the public mind, denoting only American Airlines, Inc.; that sub-

stantial public confusion exists and is likely to continue; and that, therefore, American Airlines, Inc., must be protected from the use by respondent, North American Airlines, Inc., of the word "American" as any part of its business name.

Since American Airlines, Inc., carries approximately 5½ million passengers each year over its system, I am not impressed with the fact that witnesses in this case (principally those employed by American Airlines itself) have testified that some confusion has existed between the services offered

by American, on the one hand, and North American on the other. On the contrary, I would be greatly surprised, (in view of the several million phone calls and other communications which American Airlines receives every year over and above those received from passengers which it actually carries) if there were not some demonstrable public confusion between American Airlines and the respondent in this case. As I read the law, however, a new "competitor" is not required to insure against any and all confusion which its entry into the field may cause to certain uninformed purchasers.

When considered in the light of the facts before us in this case, the following excerpts from court decisions bearing on the matter of public confusion and the extent of that confusion required to support injunctive relief are pertinent:

"The issue in such a case as this is 'whether an appreciable number of prospective purchasers of the goods . . . are likely' to be confused. 'That a few particularly undiscerning prospective purchasers might be so misled is not enough.'"

Eastern Wine Corp. v. Winslow Warren Ltd., Inc., 137 F. 2d. 955, 960 (1943).

In the *Life Savers Corp. Case*,¹ just as in the case before us, some confusion was actually shown. The Circuit Court, however, quoted the trial court and agreed that "... it is

¹ *Life Savers Corp. v. Curtiss Candy Co.*, 182 F2d 4, 8 (1950).

just as probable that the confusion can be attributed to the size and shapes of the various packages as to the exact wording and coloring of the labels". In that same case, in view of the tremendous volume of sales the court said, "It would be extraordinary if some confusion could not be found irrespective of the details of the dress of the package".

Although both the examiner and the intervenor here have cited the *Florence Manufacturing Case*² and the language therein to the general effect that the ignorant, unthinking and credulous public must be protected by the law of unfair competition, other authoritative cases take a different view. The same court which decided the *Florence Case* had the following to say 33 years later on the matter of unduly protecting the interest of the businessman:

"The failure to keep constantly in mind the divers policy considerations which, in this legal province, come in conflict with one another and the consequent occasional over-emphasis on but one of them—the protection of the interest of the businessman who has built a business around a name—has sometimes led to decisions unduly extending the confines of name-monopolies. For a time the courts were remarkably generous in fixing the boundaries of such monopolies. Today the tendency is to be somewhat less generous. (*Durable Toy & Novelty Corp. v. J. Chein & Co.* 133 F2d 853, 1943) We approach the case at bar, then, having in mind the basic common law policy of encouraging competition and the fact that the protection of monopolies in names is but a secondary and limiting policy." (Emphasis added.)

Eastern Wine Corp. v. Winslow-Warren Ltd., Inc., 137 F2d 955, 959 (1943).

In 1943 a District Court in Nebraska had this to say on the matter of the obligation of a new competitor toward the non-discriminating public:

²*Florence Mfg. Co. v. J. C. Dowd & Co.*, 178 F. 73 (1910).

"Upon this branch of the case the law is settled that competition is not forbidden but rather unfairness in competition, and that the essence of actionable unfairness in competition is the creation by one come newly into a competitive field of a situation that is reasonably calculated to result in the passing off of his goods as those of his competing predecessor in the market. Again, *the new competitor is not held to the obligation of an insurer against some confusion*, but is required only to use reasonable care to inform the public of the source of his product, to use every reasonable means to prevent confusion. *Pointedly, he is not obliged so to guard his competitive methods that even the negligent or inattentive purchaser will be protected from confusion. As the cases in some instances have*

1055 *put it, he is not required to make the market 'fool proof'.*" *Skinner Mfg. Co. v. General Foods Sales Co.*, 52 Fed. Supp. 432, 450 (194) (Emphasis added)

The thorough-going analysis of the law made by the District Court in this case was commented upon with approval by the Circuit Court on appeal³ and certiorari was denied by the Supreme Court of the United States. Even more recently, in 1950, the Court of Appeals for the 7th Circuit made this pertinent observation:

"A new competitor is not held to the obligations of an insurer against all possible confusion. *He is not obligated to protect the negligent and inattentive purchaser from confusion resulting from indifference . . .* In *Fruit Growers Co-op.*, 170 F2d 834 at page 837, this court said: '*. . . Instead they are required only to mark or designate them in such manner that purchasers exercising ordinary care to discover whose products they are buying will know the truth and not become confused or mistaken . . .*' *Life Savers Corp. v. Curtiss Candy Co.*, 182 F2d 4, 8 (1950). (Emphasis added.)

³ *Skinner Manufacturing Co. v. Kellogg Sales Co.*, 143 F2d 895 (1944) Cert. Denied, 323 U. S. 766.

In light of the foregoing authorities and many others cited in Respondent's briefs and exceptions (and not mentioned either by the examiner or the majority), I conclude that the public confusion or the likelihood of its continuance established in this record is not such that this Board should enjoin Respondent from continued use of its corporate name on the grounds of unfair competition.

Aside from the foregoing difficulties which I have relative to the findings of public confusion in this case, I must also differ with the finding as to secondary meaning made by both the examiner and the majority. This legal doctrine has been clearly defined in several cases, but in no 1056 case do I find that it has been applied to protect the user of a geographical name such as "American", where that user was neither the first nor the exclusive user. As shown by this record, of course, American Airlines can claim to be neither the first nor the exclusive user.

I have carefully examined the thirteen cases upon which the examiner and the majority rely for the finding that the term "American" when applied to air transportation has taken on a secondary meaning so that a new airline must not be allowed to use the term as any part of its business name. In every one of the cases cited the plaintiff prevails under this theory of secondary meaning because *without exception the plaintiff was both the first and sole user of the name involved*.⁴ Furthermore, in eleven of the thir-

⁴ *Hudson Tire Co., Inc. v. Hudson Tire & Rubber Corporation et al.*, 276 Fed. 59 (1921).

Standard Paint Co., v. Rubberoid Roofing Co., et al., 224 Fed. 695 (1915).

American Products Co., v. American Products Co., 42 F2d 488 (1930).

American Radio Stores, Inc., v. American Radio and Television Stores Corp., 150 A. 180 (1930).

Delaware L. & W. R. Co. v. Lackawanna Motor Freight Lines, 175 Atl. 905 (1934).

Barton et al., v. Rex-oil Co., Inc., 2 F2d 402 (1924).

American Thread Co. v. North American Thread Co., Inc., 33 Fed. Supp. 616 (1935).

teen cases the name sought to be used by the new competitor was either identical to that of the first and exclusive user or sounded identical thereto or differed therefrom only by the omission of one letter (viz., "Finchley" as the original name compared with "Finchly" used by the new competitor in the *Finchley Case*). Also in many of the cases cited by the examiner, the courts made specific findings that the second user of the name involved had adopted it with the willful and fraudulent intent to deceive the public (*Standard Paint Case*, *Barton Case*, *Delaware and Lackawanna Case*, and *Finchley Case*)—whereas in the case now before us the examiner made no such finding but, in fact, found that "There is no evidence of record that North American adopted its name with intent to deceive the public or trade upon the good will and business reputation of American."⁵

In other cases cited by the examiner in support of his finding of secondary meaning the courts found, as a matter of fact, truly substantial evidence not only of public deception, but also of actual injury to the trade or profits of the plaintiff. (*Barton Case*, *American Radio Stores Case* and the *Womble Case*.) On this point also the examiner in the case now before the Board has specifically found *no evidence* that American has been injured by North American's operation.

In light of the foregoing distinguishing features of the cases cited from the facts in the present record, I cannot agree that American Airlines has established a secondary

Womble v. Parker, 67 S.E. 2d 133 (1951).

Phillips v. The Governor & Co. of Adventurers of England trading into Hudson Bay, 79 F2d 971 (1935).

Lincoln Motor Co., et al., v. Lincoln Automobile Co., 44 F2d 812 (1930).

Finchley, Inc., v. Finchly Co., Inc., 40 F2d 736 (1929).

Western Auto Supply Co., v. Knox, 93 F2d 850 (1937).

Thomas A. Edison, Inc., v. Shetkin, 69 Fed. Supp. 176 (1946).

⁵ Examiner's Report, page 15.

meaning in the term "American" when applied to air transportation such as to give that carrier an "exclusive" property right to the name or such as to require North American Airlines to be enjoined from further use of that term in its name.

In light of what I have said earlier concerning my differences with the majority on the extent of public confusion actually proven here, I must also dissent from their finding that the similarity of the two names, American Airlines, Inc., and North American Airlines, Inc., is so great as to require us in the public interest to enjoin North American from further use of its corporate name. Although it is not clear from the majority opinion itself whether the finding as to similarity in names is based on evidence of public confusion; or merely upon the comparison of the two names in the minds of the majority without reference to public confusion, I must dissent from their finding on whichever basis the finding of similarity is made.

Finally, even if I did not have the foregoing difficulty with the majority's findings of public confusion and secondary meaning, I would nevertheless have to take this occasion to question seriously the wisdom of the sanction imposed by the majority in this case which, in effect, absolutely prohibits North American Airlines from using the name "American" in any way in its business name. The effect of this prohibition, of course, is to nullify the efforts which that carrier has made and the substantial sums of money which it has expended in building up public good will under that name. I have difficulty in minimizing these serious consequences by simply finding, as the majority does, that North American must be prepared to accept the reasonable consequences of its adoption of its name. Rather than insist on the absolute prohibition against continued use of its name, it would seem reasonable to me that American would be amply protected if North American were required to make more clear in its advertisements and contact with the public that it is not to be confused with American Airlines. This could be done, it seems to me, in any one of several ways, but regardless of the method used, North American would be enabled to

capitalize upon the good will which it has engendered since 1951 under its corporate name.⁶

(s) JOSEPH P. ADAMS.

1060

APPENDIX

EXCERPTS FROM THE INITIAL DECISION OF WALTER W. BRYAN,
EXAMINER IN THE NORTH AMERICAN AIRLINES, INC., CASE
DOCKET NOS. 5774 AND 5928

• This proceeding arises as the result of the Board's order serial No. E-7107, dated January 28, 1953, in which it is ordered that an investigation be instituted to determine whether North American Airlines, Inc., formerly Twentieth Century Air Lines, Inc., in engaging in air transportation under the name of North American Airlines, Inc., North American Airlines, or North American, has been and is engaging in activities and practices in violation of section 411 of the Act, and if any such violation is established, whether the Board should issue an order directing North American to cease and desist from such violations.

It is indicated in the record that on March 11, 1952, Twentieth Century Air Lines, Inc. (Twentieth Century) advised the Board that the corporate name of Twentieth Century had been changed to North American Airlines, Inc., (North American) effective March 3, 1952, and it requested the Board to change its records accordingly and reissue its letter of registration in the new name.

On August 19, 1952, the Board adopted an amendment No. 7 to Part 291 of its Economic Regulations, effective September 23, 1952. The above amendment added a new section, 291.28, *Business Name of Air Carrier*, which provided:

“On and after November 15, 1952, it shall be an express condition upon the operating authority granted

⁶ Support for this type of relief rather than that decided upon by the majority is found in several cases including *Singer Manufacturing Company v. Bent* 163 U. S. 205, and *French Republic v. Saratoga Vichy Company*, 191 U. S. 427.

by this Part and the letters of registration issued hereunder that the air carrier concerned, in holding out to the public and in performing air transportation services shall do so only in a name the use of which is authorized under the provisions of this section.

(a) Except as otherwise provided under paragraph (b) of this section, an air carrier may do business in the name in which its letter of registration is then issued and outstanding, including abbreviations, contractions, initial letters, or other minor variations of such name which are readily identifiable therewith:

(b) An air carrier may do business in such other and different name or names as the Board may by order permit, upon a finding that the use of such other name or names is not contrary to the public interest. Any such permission may be made conditional upon the abandonment of the use of the name in which its letter of registration is issued and outstanding, in air transportation service by the air carrier concerned, or
1061 otherwise be made subject to such reasonable terms and conditions as the Board may find necessary to protect the public interest."

On October 6, 1952, North American timely filed an application under the above regulation for authority to conduct its operations under the name North American Airlines, Inc., in lieu of Twentieth Century Air Lines, Inc. Upon consideration of this application the Board determined to institute the above described investigation and by its order consolidated the above application, Docket No. 5774, with the investigation proceeding, Docket No. 5928, for hearing and decision.

American Airlines, Inc., (American) was permitted to intervene and participated in the proceeding. A hearing has been held and all parties given an opportunity to file briefs with the Examiner.

Issues.—The issue involved here is whether North American has been or is engaged in unfair or deceptive practices, or unfair methods of competition in air transportation, within the meaning of section 411 of the Act, by the use

of the name North American Airlines, Inc., North American Airlines, or North American, and if any violation is established whether North American should be ordered to cease and desist therefrom; also whether the granting of the request in North American's application for leave to change its name to North American Airlines, Inc., would be contrary to the public interest.

Twentieth Century Airlines, Inc., was incorporated in North Carolina on May 4, 1946, and holds a letter of registration as a large irregular air carrier. On March 3, 1952, the above carrier amended its articles of incorporation so as to change its name to North American Airlines, Inc. Since on or about April 21, 1951, the above carrier has engaged in the air transportation of persons between, among other points, New York, Chicago, and Los Angeles, under the trade name of North American Airlines.

American Airlines, Inc., (American) the intervener in this proceeding, was incorporated in Delaware on April 11, 1934, succeeding American Airways, Inc., which was incorporated under the laws of Delaware on January 25, 1930. American has continuously engaged in air transportation of persons, property, and mail since the above dates and has operated between, among other places, New York, Chicago, and Los Angeles as a scheduled air carrier.

American registered on July 27, 1948, the name "American Airlines" under the Federal Trademark Act, 15 U.S.C. 1051 et seq., on the Principal Register (No. 514294) of the United States Patent Office as a service mark used in connection with the furnishing of air transportation.

1062 Since 1934 American has concentrated in its advertising [on] the names "American" and "American Airlines" with the purpose of creating in the public mind an identity between the name American and its air transportation service. There were introduced in evidence samples of such advertising as ["American's Leading Airline"], ["Better by Air—Best by American"], "American to Detroit the Most Frequent Service," "American to Washington \$98 via DC-6 Airtourist Service," "American to New York 11 Nonstop Flagships," and "American's Convairs Are Coming."

The above type of advertising has appeared weekly on 251 billboards and in 142 newspapers throughout the country with a combined circulation of approximately 28,000,000. American has spent in excess of \$2,250,000 for the above type of advertising since 1949.

American has also advertised extensively in magazines and during the period between 1948 and 1952 it spent approximately \$3,800,000 for such advertising. It also advertises in the various cities served by American by means of display signs appearing at airports and in other public places. In 1940 American produced a sales movie entitled "The American Way," which has been shown to groups throughout the country, depicting its service and the comfort, speed and convenience of air travel. American is currently spending on newspaper and billboard advertising approximately \$600,000 annually.

An officer of American in testifying stated that in his opinion the extensive advertising of American service as being the leading airline in American air commerce had been accepted by the traveling public. He further stated that much of American's advertising is devoted to identifying American with a certain route structure and with a certain type of superior equipment.

The direct evidence of record consists of testimony of witnesses who, for the most part, are employed by American as ticket and reservation agents located at Los Angeles, Burbank, Chicago, and New York. There were also affidavits and written statements from ticket and reservation agents received in evidence for the purpose of establishing whether the names "American" or "American Airlines" and "North American" or "North American Airlines" are confusing to the traveling public.

The above evidence generally involved numerous inquiries on the part of the public made to American employees concerning service, rates, routes, and schedules of North American under the mistaken impression that North American and American were one and the same airline.

An officer of American testified that he had received from employees under his supervision numerous inquiries indi-

cating confusion between American Airlines and
1063 North American Airlines, and that * * * his office had
received a telephone call from a representative of
a trade union, complaining that an American sign was
being painted by non-union painters, and upon investigation
it was found that the sign was that of North American.
There were instances of air passengers holding North
American tickets attempting to check in for North American
flights at American ticket counters—in fact, at the
Burbank office this was a daily occurrence—and many of
the passengers were still confused after an explanation
had been made that American and North American were
two different airlines. There were instances where North
American passengers attempted to claim their baggage at
the American counter; also other instances where prospec-
tive passengers insisted they were entitled to a discount for
transportation on American because they held a "Buyers
League Scrip Book." Upon an investigation by the pas-
sengers making the inquiries, it was learned that it was
North American instead of American which offered a dis-
count.

There were other instances of persons meeting incoming
North American passengers who made inquiries at the
American ticket counter at Burbank to determine time of
arrival. Other inquiries were made of American agents at
Los Angeles concerning an \$80 fare from Los Angeles to
New York, which the person had heard advertised on tele-
vision, and upon investigation it was found that it was
North American they were referring to and not American.
One witness testified that she had heard people state that
they were under the impression that North American and
American were the same or affiliated companies. Another
witness for American testified that one person insisted that
American flew from New York to Miami because she had
heard a radio program to that effect, whereas the program
in question was that of North American. There were in-
stances where mail addressed to North American was
delivered to American Airlines' office. Tradesmen have
dunned American for bills owed by North American and
hotels have requested American's advice as to billing for

hotel charges incurred by North American crews. A witness for American stated that at its Burbank office the president of North American, who is on duty at the North American ticket counter at Lockheed air terminal, informed her that many persons would stop at his counter and request tickets to Dallas, Oklahoma City, or Tulsa, points which North American did not serve, and he would realize that the passengers were confused and that they were under the impression it was American's ticket counter. The president further stated to the witness that if the passengers were destined to New York or Chicago he would do everything he could to "steal" them.

There were many other instances similar to those referred to above that need not be repeated here. In general, they indicate that certain confusion exists on the part of the public in distinguishing the services of the two airlines in question.

The witnesses who appeared and testified on behalf of North American were ticket agents from Burbank and Washington, D. C. Their testimony was to the effect that they had not experienced any great degree of confusion on the part of the public involving the similarity of names between American and North American. The agent at Burbank stated it was a common occurrence at his counter for persons to inquire about the services of other carriers such as United and particularly the services of North Star—in fact, the witness had noticed a certain amount of confusion existing on the part of the public between North American and North Star. Another witness for North American stated that his experience had been that the majority of customers made inquiries concerning destinations of the various carriers and were not particularly confused about the similarity of names of the carriers.

Discussion.—Section 411 of the Civil Aeronautics Act empowers the Board to determine whether any air carrier or ticket agent has been engaged or is engaging in unfair or deceptive practices, or unfair methods of competition in air transportation or the sale thereof, and if such is found to exist the Board is empowered to order discontinuance of such practices.

* * * one must look for guidance to the decisions of the courts in their application of unfair trade practices as set forth under section 5 of the Federal Trade Commission Act, * * * The Federal Trade Commission has been given the jurisdiction by statute over unfair competition in the common law sense of the term and also under the statutory language as defined "any unfair method of competition or unfair or deceptive act or practice in commerce." It is noted that the word "act" in the Federal Trade Commission Act has been omitted in section 411 of the Civil Aeronautics Act.

The courts have said that the unfair trade practice law is for the protection of the public and not for the experts, but rather for "the vast multitude which includes the ignorant, the unthinking, and the credulous, who in making purchases do not stop to analyze but are governed by appearance and general impressions."¹

The most common form of unfair competition is the imitation of a trade name, trade symbol, or device by a competitor. This may be a family name or the name of a corporation, labels, or deceptive packaging. * * *

1065 In the case of *Hudson Tire Co., Inc. v. Hudson Tire and Rubber Corporation et al.*, 276 F. 59, the court stated that the word "Hudson" as applied to tires had obtained a secondary meaning, referring to plaintiff's merchandise, and the fact that defendant had secured its corporate name from the State of New York did not authorize it to use the name "Hudson" in connection with such merchandise.

The courts have likewise held that in looking for a secondary meaning in a trade-mark, it is controlled by the fact that such a meaning has been acquired in the minds of the public rather than by the time it has taken for that fact to be established.⁴

Another case in point is that of *American Products Co. v. American Products Co.*, 42 F. 2d 488. It is noted that one

¹ See *Florence Mfg. Co. v. J. C. Dowd & Co.*, 178 F. 73; *Stork Restaurant, Inc. v. Sahati et al.*, 166 F. 2d 348.

⁴ *Barton et al. v. Rex-oil Co., Inc.*, 2 F. 2d 402.

of the above companies was a Delaware corporation and the other one a Michigan corporation. The court said, in part:

“Assuming, for the purposes of this opinion, that the name ‘American Products Company’ should be regarded as a geographical name indicating products made in America, rather than a somewhat fanciful name not intended to denote the place of manufacture of such products, it is well settled that when a person has adopted, as the name of a business, a term originally geographical, and, by his efforts and expenditures, has developed a reputation and good will for such business and its products, so that such name has come to mean, in the minds of the general public, that particular business and its products, such name thereby acquires a secondary meaning, as indicating such business, and its owner is entitled to protection, in its use, by a court of equity.”

In the case of *American Radio Stores, Inc. v. American Radio and Television Stores Corp.*, 150 A 180, the court stated:

“Those words (radio and stores) are purely descriptive and, when used by the complainant, have attached to them no meaning of a secondary nature. But when the word ‘American’ is used in conjunction with them, a distinguishing mark is introduced and the complainant is entitled to be protected in its use of that distinctive feature of its name.”

In the case of *Delaware L. & W. R. Co. v. Lackawanna Motor Freight Lines*, 175 Atl. 905, the court held that the rights of the plaintiff were based on a secondary meaning acquired by its use in the transportation business, and its use by defendant was a device to deceive the public, although the court held that fraudulent intent need not necessarily be shown to invoke the aid of the court.

1066 Another case in point is *American Thread Co. v. North American Thread Co., Inc.*, 33 F. Supp. 616, where the court held that a newcomer operating under a

similar name to a company already in the business was an act of unfair competition.

Another pertinent case is that of *Wamble v. Parker*, 67 S. E. 2d 133, which involved a newcomer into a business wherein it attempted to advertise its products under a trade name similar to one already in use by its long-established competitor. The court said, in part:⁵

“While geographical names and words which are merely descriptive are not generally the subject of exclusive appropriation as trade-marks or trade names, such names and words when used so long and exclusively by a trader, manufacturer or producer that they are generally understood to designate his business or merchandise, may acquire a secondary signification of meaning indicative not only of the place of manufacture, but of the name of the manufacturer or producer, or of the character of the product, so that the name or title thus employed, including the geographical name and descriptive words, may be the subject of protection against unfair competition in trade, and authorize equity to enjoin a newcomer competitor from the appropriation and use of a trade name or trade-mark bearing such resemblances to those of the pioneer as to be likely to produce uncertainty and confusion, and to pass off the goods or business of one as those of another.”

It is clear from the foregoing that a geographical term used in a business name may acquire a secondary meaning by actual use and upon which the owner may create goodwill in its business relationship with the public. Thus such name becomes a valuable asset and a business advantage. Therefore, in such instances the trade name becomes of a pecuniary value or a property right, and the courts have

⁵ Other cases in point are: *Phillips v. The Governor & Co. of Adventures of England trading into Hudson Bay*, 9 F. 2d 971; *Lincoln Motor Co. et al. v. Lincoln Automobile Co.*, 44 F. 2d 812; *Finchley, Inc. vs. Finchley Co., Inc.*, 40 F. 2d 736; *Western Auto Supply Co. v. Knox*, 93 F. 2d 850.

consistently held that such rights are entitled to the protection afforded by the courts.

There can be no dispute that American Airlines is the prior user of the name "American" as between it and North American, as American has used the above name since 1934 and its predecessor used the name prior to that time; whereas North American has used its name only since April 1951. American has consistently over the years promoted the use of the term "American" in its advertising and public relation work. * * *

1067 Upon consideration of all the facts, and in view of the court decisions pertaining thereto, it is concluded that the name "American" and "American Airlines" used in connection with air transportation has acquired a secondary meaning as identifying American Airlines, Inc.

* * * * *

One of the important factors in a case of this kind arising under section 411 is whether the public is being deceived or confused and thus affecting the public interest in air transportation. The court stated in the case of *Anheuser-Bush, Inc. v. Budweiser Malt Products Corporation*, 287 F. 243, that the fundamental question in cases of trade-marks or unfair competition is whether the public is being misled and deceived so that the defendant is in effect taking advantage of the good-will and business reputation of another who has built it up through service or advertising.⁸

There are numerous examples in the record indicating confusion between American and North American Airlines on the part of the public. * * *

The type of inquiries indicating confusion involved in this proceeding, which have heretofore been discussed, is typical of those occurring to the average member of the public. Naturally, such inquiries were not made by persons who are frequent travelers by air or well informed on aviation matters but rather the unformed, and it is the in-

⁸ See *United Drug Company v. Theodore Rectanus*, 248 U. S. 90.

terest of the uniformed that the Board is required to protect from confusion because of similarity of names.

* * * The courts have consistently held that in cases involving violation of trade-marks the right of injunction depends not on the fact that the purchaser has been deceived but rather on the fact that the public may be deceived if such acts of confusion are permitted to continue. The proof that confusion has already existed adds to the likelihood of continued deception.¹⁰

1068 There is no question but what American has acquired during the past 20 years through its constant efforts a good-will in its use of the name "American" or "American Airlines," which has become a valuable asset to be protected. However, an action for infringement of America's trade name can find its remedy in the courts. Section 411 was not designed for the purpose of protecting the private rights of an individual carrier except to the extent of a regulating competition between the various air carriers to assure fair competition and thereby maintain a sound economic transportation system; also, equally important, the Board was given the responsibility of safeguarding the public interest against unfair and deceptive methods of competition.

North American is a newcomer in the field of air transportation as compared to American's operations, and it should have known that the similarity of names between North American and American would have the capacity to confuse the public as to the true identity of the carriers. There are numerous instances of record where the public

¹⁰ *J. C. Penney Co. v. H. D. Lee Mercantile Co.*, 120 F. 2d 949; *Ralston Purina Co. v. Saniwax Paper Co. et al.*, 26 F. 2d 941; *Wisconsin Electric Co. v. Dumore Co.*, 35 F. 2d 555; *Henry Muhs Co. v. Farm Craft Foods, Inc., et al.*, 37 F. Supp. 1913; *United Drug Co. v. Obear-Nester Glass Co.*, 111 F. 2d 997; *Pep Boys—Manny, Moe & Jack, Inc. v. Federal Trade Commission*, 122 F. 2d 158. *American Home Benefit Assn., Inc. v. United American Benefit Assn., Inc.*, 125 F. 2d 1010; *United Lace & Braid Mfg. Co. v. Barthels Mfg. Co.*, 221 F. 456.

has been confused and inconvenienced by this similarity of names. * * *

The task would not have been a difficult one for North American to have adopted another trade name which was different from the names of other air carriers in operation and thereby avoid the tendency on the part of the public to mistake one carrier for the other.

In view of the public confusion which has arisen and may increase in the future as air transportation becomes a more accepted mode of travel, and the services rendered by the carriers become more alike as well as the aircraft itself, it is in the public interest that the identity of the carrier be readily distinguishable by the public. Therefore, the continued use of the name "North American" by Twentieth Century is so similar to the trade name "American" as used by American Airlines, Inc., as to constitute an unfair and deceptive practice as well as an unfair method of competition, and it is so found.

* * * * *

1069

Order No. E-7870

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

Washington, D. C.

Adopted by the Civil Aeronautics Board at its Office in Washington, D. C., on the 4th day of November, 1953

Docket No. 5774

In the Matter of the Application of NORTH AMERICAN AIRLINES, INC., for Authority to Conduct its Operations under the Name of North American Airlines, Inc.

Docket No. 5928

In the Matter of an Investigation Pursuant to Section 411 of the Act of Certain Practices of NORTH AMERICAN AIRLINES, INC.

ORDER

A full public hearing having been held in the above-entitled proceedings and the Board, upon consideration of

ALL AMERICAN AIRWAYS, INC.

EXECUTIVE OFFICES: WASHINGTON NATIONAL AIRPORT • WASHINGTON 1, D. C.

ROBERT M. LOVE, President
HALSEY R. BRAZLEY, Vice President

CHARLES W. WENDT, Vice President-Treasurer

DAVID L. MILLER, Director of Sales
COLIN H. MCINTOSH, Director of Operations

OPERATING ROUTE 97—PASSENGERS—MAIL—CARGO

WASHINGTON—BALTIMORE—PITTSBURGH

| 105 | | | 101 | | | 100 | | | 102 | | | 104 | | |
|-------|------|------|--------------|-------------------------|----------|-------|-------|------|--------------|-------|-------|-------|----|-------|
| Daily | | | Ex Su & Hol. | | | Daily | | | Ex Su & Hol. | | | Daily | | |
| PM | | | AM | | | AM | | | PM | | | PM | | |
| 1 40 | 2 00 | 7 00 | Lv | WASHINGTON | (EST) Ar | 10 44 | 1 11 | 8 04 | Lv | 10 21 | 7 41 | 8 04 | Lv | 10 21 |
| 5 02 | 5 04 | 7 22 | Ar | BALTIMORE | Lv | 10 19 | 7 39 | 7 39 | Ar | 10 19 | 7 39 | 7 39 | Ar | 10 19 |
| 5 29 | 2 27 | 7 49 | Lv | BALTIMORE | (EST) Ar | 9 56 | 12 46 | 7 16 | Lv | 9 56 | 12 46 | 7 16 | Lv | 9 56 |
| 5 31 | 2 29 | 7 51 | Ar | FREDERICK | Lv | 9 54 | 12 44 | 7 14 | Ar | 9 54 | 12 44 | 7 14 | Ar | 9 54 |
| 5 49 | 2 47 | 8 09 | Lv | HAGERSTOWN | Lv | 9 37 | 12 27 | 6 57 | Lv | 9 37 | 12 27 | 6 57 | Lv | 9 37 |
| 5 51 | 2 49 | 8 11 | Ar | HAGERSTOWN | (EST) Ar | 9 35 | 12 25 | 6 55 | Ar | 9 35 | 12 25 | 6 55 | Ar | 9 35 |
| 6 07 | 3 05 | 8 27 | Lv | MARTINSBURG | Lv | 9 19 | 12 09 | 6 39 | Lv | 9 19 | 12 09 | 6 39 | Lv | 9 19 |
| 6 16 | 3 14 | 8 36 | Ar | MARTINSBURG | (EST) Ar | 9 10 | 12 00 | 6 30 | Ar | 9 10 | 12 00 | 6 30 | Ar | 9 10 |
| 6 40 | 3 38 | 9 00 | Lv | CUMBERLAND | Lv | 8 48 | 11 38 | 6 08 | Lv | 8 48 | 11 38 | 6 08 | Lv | 8 48 |
| 6 42 | 3 40 | 9 02 | Ar | CUMBERLAND | (EST) Ar | 8 46 | 11 36 | 6 06 | Ar | 8 46 | 11 36 | 6 06 | Ar | 8 46 |
| 7 09 | 4 07 | 9 29 | Lv | CONNELLSVILLE-UNIONTOWN | Lv | 8 21 | 11 11 | 5 41 | Lv | 8 21 | 11 11 | 5 41 | Lv | 8 21 |
| 7 11 | 4 09 | 9 31 | Ar | CONNELLSVILLE-UNIONTOWN | (EST) Ar | 8 19 | 11 09 | 5 39 | Ar | 8 19 | 11 09 | 5 39 | Ar | 8 19 |
| 7 32 | 4 30 | 9 52 | Lv | PITTSBURGH | Lv | 8 00 | 10 50 | 5 20 | Lv | 8 00 | 10 50 | 5 20 | Lv | 8 00 |
| PM | PM | AM | | | | AM | AM | PM | | | | PM | PM | PM |

DC-3 Equipment on all flights.

ATLANTIC CITY—PHILADELPHIA—PITTSBURGH

| 204A | 202A-305 | 200A-303 | 301 | Effective March 7, 1949 | | 300-301A | 302-203A | 304-205A |
|-------|----------|----------|------|-------------------------|----------|----------|----------|----------|
| | | | | Read Down | Read Up | | | |
| PM | PM | PM | AM | | | AM | PM | PM |
| 10 23 | 3 19 | 12 49 | | Lv ATLANTIC CITY | (EST) Ar | 11 39 | 2 39 | 8 5 |
| 10 49 | 3 45 | 1 15 | | Ar PHILADELPHIA-CAMDEN | Lv | 11 15 | 2 15 | 8 5 |
| | 4 15 | 1 45 | 7 15 | Lv PHILADELPHIA-CAMDEN | Ar | 10 43 | 1 43 | 8 0 |
| | 4 41 | 2 01 | 7 31 | Ar WILMINGTON | Lv | 10 27 | 1 27 | 7 4 |
| | 4 50 | 2 10 | 7 40 | Lv WILMINGTON | Ar | 10 18 | 1 18 | 7 3 |
| | 5 06 | 2 35 | 8 06 | Ar LANCASTER | Lv | 9 54 | 12 54 | 7 1 |
| | 5 08 | 2 37 | 8 08 | Lv LANCASTER | Ar | 9 52 | 12 52 | 7 1 |
| | 5 27 | 2 57 | 8 27 | Ar HARRISBURG | Lv | 9 34 | 12 34 | 6 5 |
| | 5 29 | 2 59 | 8 29 | Lv HARRISBURG | Ar | 9 32 | 12 32 | 6 5 |
| | 6 05 | 3 35 | 9 05 | Ar ALTOONA | 4v | 8 58 | 11 58 | 6 1 |
| | 6 07 | 3 37 | 9 07 | Lv ALTOONA | Ar | 8 56 | 11 56 | 6 1 |
| | 6 24 | 3 54 | 9 24 | Ar JOHNSTOWN | Lv | 8 40 | 11 40 | 6 0 |
| | 6 26 | 3 56 | 9 26 | Lv JOHNSTOWN | Ar | 8 38 | 11 38 | 5 5 |
| | 6 56 | 4 26 | 9 56 | Ar PITTSBURGH | (EST) Lv | 8 10 | 11 10 | 5 3 |
| PM | PM | PM | AM | | | AM | AM | PM |

DC-3 Equipment on all flights.

NOW

A NEW PASSENGER SERVICE COVERING
THE HEART OF INDUSTRIAL AMERICA

Replacing its air pick-up operations with conventional passenger, mail and cargo service, All American Airways will open two segments of its newly certificated routes this month. Equipment used is twin-engined DC-3's, with built-in

steps to cut ground time down to two minutes at each local stop. Specify All American for fast flights to these new airline points and for quick interline connections.

ALL

BUFFALO

| | | | | | | | | |
|------|------|------|----|-------------------------|----------|------|-------|------|
| 6 07 | 3 05 | 8 27 | Lv | MARTINSBURG | Lv | 9 19 | 12 09 | 6 39 |
| 6 16 | 3 14 | 8 36 | Ar | MARTINSBURG | (EST) Ar | 9 10 | 12 00 | 6 30 |
| 6 40 | 3 38 | 9 00 | Lv | CUMBERLAND | Lv | 8 48 | 11 38 | 6 08 |
| 6 42 | 3 40 | 9 02 | Ar | CUMBERLAND | (EST) Ar | 8 46 | 11 36 | 6 06 |
| 7 09 | 4 07 | 9 29 | Lv | CONNELLSVILLE-UNIONTOWN | Lv | 8 21 | 11 11 | 5 41 |
| 7 11 | 4 09 | 9 31 | Ar | CONNELLSVILLE-UNIONTOWN | (EST) Ar | 8 19 | 11 09 | 5 39 |
| 7 32 | 4 30 | 9 52 | Lv | PITTSBURGH | Lv | 8 00 | 10 50 | 5 20 |
| PM | PM | AM | | | | AM | AM | PM |

DC-3 Equipment on all flights.

| | | | | | | | | |
|------|------|------|----|------------|----------|------|-------|------|
| 5 08 | 2 37 | 8 08 | Lv | LANCASTER | Ar | 9 52 | 12 52 | 7 12 |
| 5 27 | 2 57 | 8 27 | Ar | HARRISBURG | Lv | 9 34 | 12 34 | 6 54 |
| 5 29 | 2 59 | 8 29 | Lv | HARRISBURG | Ar | 9 32 | 12 32 | 6 52 |
| 6 05 | 3 35 | 9 05 | Ar | ALTOONA | Lv | 8 58 | 11 58 | 6 18 |
| 6 07 | 3 37 | 9 07 | Lv | ALTOONA | Ar | 8 56 | 11 56 | 6 16 |
| 6 24 | 3 54 | 9 24 | Ar | JOHNSTOWN | Lv | 8 40 | 11 40 | 6 00 |
| 6 26 | 3 56 | 9 26 | Lv | JOHNSTOWN | Ar | 8 38 | 11 38 | 5 58 |
| 6 56 | 4 26 | 9 56 | Ar | PITTSBURGH | (EST) Lv | 8 10 | 11 10 | 5 30 |
| PM | PM | PM | AM | | | AM | AM | PM |

DC-3 Equipment on all flights.

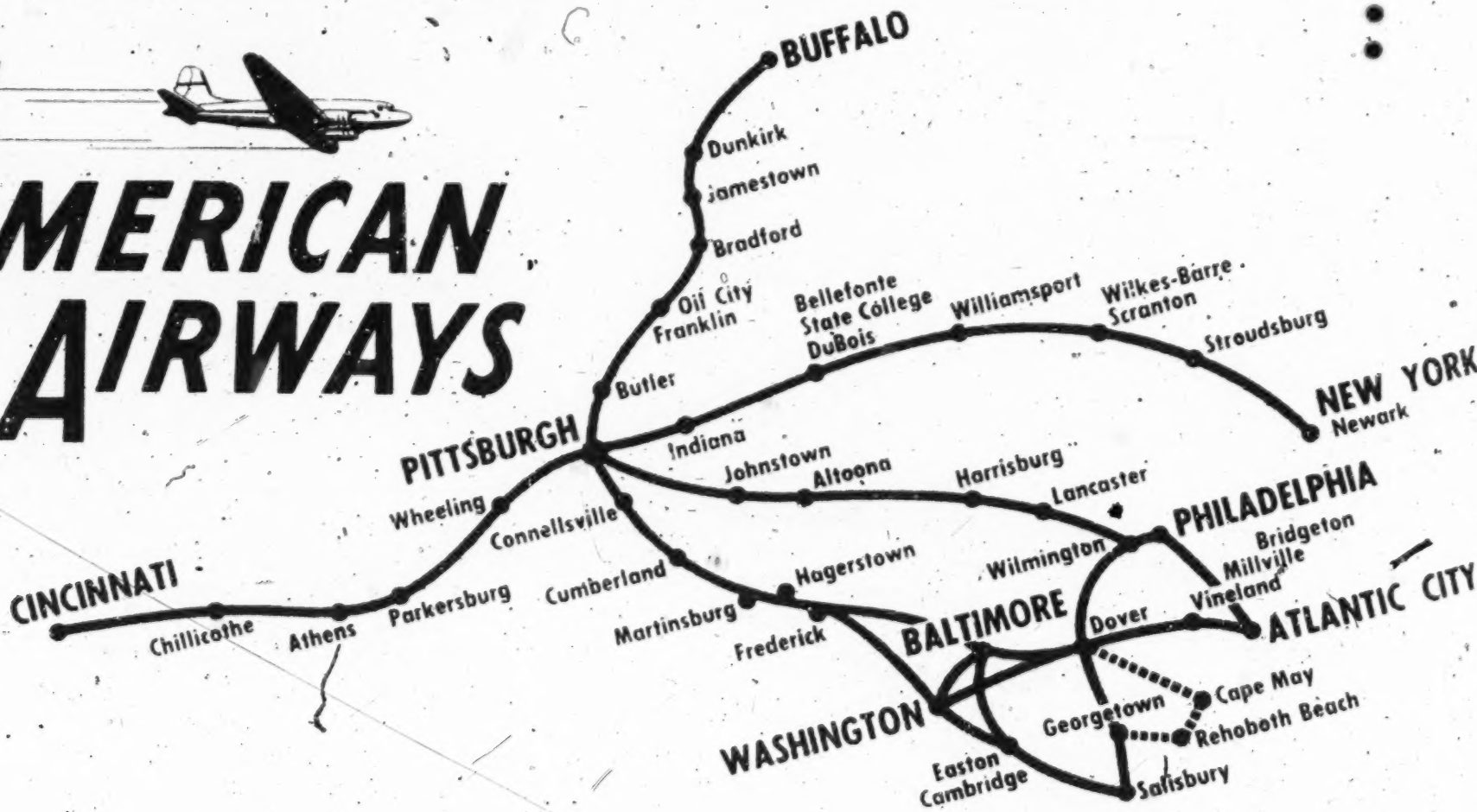
NOW

A NEW PASSENGER SERVICE COVERING
THE HEART OF INDUSTRIAL AMERICA

Replacing its air pick-up operations with conventional passenger, mail and cargo service, All American Airways will open two segments of its newly certificated routes this month. Equipment used is twin-engined DC-3's, with built-in

steps to cut ground time down to two minutes at each local stop. Specify All American for fast flights to these new airline points and for quick interline connections.

ALL AMERICAN AIRWAYS



the record, having issued its opinion containing its findings, conclusions and decision, which is attached hereto and made a part hereof;

It is ordered:

1. That the application of North American Airlines, Inc., for authority to engage in air transportation under the name North American Airlines, Inc., be and it hereby is denied;

2. That on and after the 90th day after the date of adoption of this order, North American Airlines, Inc., and its successors, assignees, representatives, agents, officers and employees be and hereby are ordered to cease and desist from engaging in air transportation under the names North American Airlines, Inc., North American Airlines, North American, or any other name which includes the word American.

By the Civil Aeronautics Board:

(S.) M. C. MULLIGAN,

[SEAL.]

Secretary.

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Pages 231 to 294

(Incomplete)

Note

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1173

Regulations
Serial Number ER-178

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
Washington, D. C.Economic Regulations
Amendment No. 7 to Part 291
Effective: September 23, 1952
Adopted: August 19, 1952

BUSINESS NAME OF AIR CARRIER

At the present time the Economic Regulations of the Board do not attempt to regulate the names under which air carriers do business. While a change in name by the holder of a certificate of public convenience and necessity has always been regarded by the Board as requiring an amendment to such certificate, there is no express requirement that the carrier do business under the exact name in which its economic operating authority is issued. The Board possesses the power, pursuant to section 411 of the Civil Aeronautics Act to require a carrier, after notice and hearing, to cease and desist from the use of a given name in cases where it finds that such use by the carrier concerned amounts to an unfair or deceptive practice or an unfair method of competition.

Until the relatively recent past there has been no need to make specific provision relating to the use of business names by air carriers since most carriers were in fact doing business under their official name without any compulsion to do so. However, there has been an increasing tendency, particularly among some of the large irregular carriers, to use names different from those in which operating authority is granted by the Board, in some cases the name being used having no identifiable relation to the name in which the authority is held. This has resulted in confusion in the minds of the public, an increase in the administrative burden of the Board, and greater difficulty in achieving adequate enforcement of the Act and the regulations. The

Board has received an increasingly large number of complaints from the public indicating that the complainant did not know the true identity of the carrier against which the complaint was being made. In several instances, it has been necessary to undertake considerable correspondence and even field investigations in order to identify the carrier responsible. Aircraft accidents have been reported in the press as having involved air carriers bearing names not registered with or even known to the Board. In at least one instance, a trade name of a carrier whose operating authority had been revoked for willful violation of the Act was assumed by another carrier operated by the same management personnel as that of the carrier whose authority had been revoked.

Most important the foregoing practices, combined with equally unstable identities among ticket agencies, have made it difficult, and in many instances impossible, for members of the traveling public to know the identity with whom they are doing business. This has had serious consequences both with respect to the business relationships involved and with respect to liability for injury or death of a passenger or other members of the public, or the loss of or damage to property.

The possibility of such abuse exists for every type of air carrier, irrespective of how its operations are authorized; and, even though the number of abuses has been relatively small, the Board believes that it should not take action to enable it to deal effectively with such abuses and to prevent their occurrence. For this reason it is adopting this regulation together with companion amendments to Parts 202, 203, 292, 296, 297 and 298 of the Economic Regulations. In so doing it is the intention of the Board to permit the greatest managerial discretion possible in the use of business names consistent with the objective of the regulation. Accordingly, the regulation permits use of abbreviations, initials, nicknames and other variations of the name on file with the Board without obtaining permission therefor and places no restrictions on the use of slogans. Moreover, in cases where the circumstances warrant such action, the Board may permit the use of two or more differ-

ent names by one carrier upon a showing that such multiple use will not be contrary to the public interest. Permission granted under this Part will not effect a formal change in name, but will merely constitute authority to use a different name.

It should also be noted that the restriction on the use of names does not become effective until 60 days after the effective date of the regulation. This 60-day period is designed to enable carriers which have developed goodwill in a name different from that in which their operating authority is held, to apply for and obtain permission to use such other name either exclusively or in conjunction with its certificated name. In cases where goodwill has been established in a name by use thereof, the Board will deny permission to continue such name only in cases where it believes that a violation of section 411 may be involved and such fact has been established after notice and opportunity for a hearing.

Interested persons have been afforded an opportunity to participate in the making of this rule and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 291 of the Economic Regulations (14 CFR 291) effective September 23, 1952, by adding thereto a new section 291.28 to read as follows:

291.28 *Business Name of Air Carrier.* On and after November 15, 1952 it shall be an express condition upon the operating authority granted by this Part and the letters of registration issued hereunder that the air carrier concerned, in holding out to the public and in performing air transportation services shall do so only in a name the use of which is authorized under the provisions of this section.

1175 (a) Except as otherwise provided under paragraph (b) of this section, an air carrier may do business in the name in which its letter of registration is then issued and outstanding, including abbreviations, contractions, initial letters, or other minor variations of such name which are readily identifiable therewith.

(b) An air carrier may do business in such other and dif-

ferent name or names as the Board may by order permit, upon a finding that the use of such other name or names is not contrary to the public interest. Any such permission may be made conditional upon the abandonment of the use of the name in which its letter of registration is issued and outstanding, in air transportation service by the air carrier concerned, or otherwise be made subject to such reasonable terms and conditions as the Board may find necessary to protect the public interest.

(c) Slogans shall not be considered names for the purposes of this section, and their use is not restricted hereby.

(d) Neither the provisions of this section nor the grant of a permission hereunder shall be deemed to constitute a finding for purposes other than for this section, or to effect a waiver of, or exemption from, any provisions of the Civil Aeronautics Act, or any orders, rules, or regulations issued thereunder.

(Section 205(a), 52 Stat. 984, 49 U. S. C. 425. Interpret or apply sections 411, 416(a), 416(b); 66 Stat. 628, 52 Stat. 1004; 49 U. S. C. 491, 496.)

By the Civil Aeronautics Board:

[SEAL.]

(S.) M. C. MULLIGAN,
Secretary.

Part 291 last printed June 1, 1950.

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1176

Official Airline Guide

STANDARD REFERENCE OF THE AIR TRAFFIC CONFERENCE OF AMERICA

AN AMERICAN AVIATION PUBLICATION

RECURRENT REPORT OF MILEAGE AND TRAFFIC DATA

RECURRENT REPORT OF MILEAGE AND TRAFFIC DATA

| | AMERICAN | | UNITED | | TWA | | EASTERN | | AMERICAN | | UNITED | | TWA | | EASTERN | |
|--|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| | 12 Months This Year | 12 Months Last Year | 12 Months This Year | 12 Months Last Year | 12 Months This Year | 12 Months Last Year | 12 Months This Year | 12 Months Last Year | 12 Months This Year | 12 Months Last Year | 12 Months This Year | 12 Months Last Year | 12 Months This Year | 12 Months Last Year | 12 Months This Year | 12 Months Last Year |
| SCHEDULED OPERATIONS ONLY | | | | | | | | | | | | | | | | |
| AIRCRAFT MILES: | | | | | | | | | | | | | | | | |
| Pass., prop. and U. S. mail - reg. trips.... | 68,256,171 | 54,322,698 | 53,222,355 | 49,340,697 | 46,412,606 | 43,404,094 | 53,377,653 | 50,112,133 | 68,256,171 | 54,322,698 | 53,222,355 | 49,340,697 | 46,412,606 | 43,404,094 | 53,377,653 | 50,112,133 |
| Pass., prop. and U. S. mail - ex. sections.... | 118,433 | - | 642,132 | - | 497,288 | - | 578,663 | - | 118,433 | - | 642,132 | - | 497,288 | - | 578,663 | - |
| Property and U. S. mail only - reg. trips.... | 2,734,897 | 3,062,576 | 2,840,725 | 3,950,546 | 2,564,282 | 2,400,590 | 189,595 | 1,500,000 | 2,734,897 | 3,062,576 | 2,840,725 | 3,950,546 | 2,564,282 | 2,400,590 | 189,595 | 1,500,000 |
| Property and U. S. mail only - ex. sections.... | 132,394 | - | 432,063 | - | 145,449 | - | 3,313 | - | 132,394 | - | 432,063 | - | 145,449 | - | 3,313 | - |
| Passenger and property only..... | 1,726,157 | 697,666 | - | 2,741 | - | 5,385 | - | 2,132,958 | 1,726,157 | 697,666 | - | 2,741 | - | 5,385 | - | 2,132,958 |
| Property only..... | - | 25,834 | - | - | - | - | - | - | - | 25,834 | - | - | - | - | - | - |
| Nontransport..... | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Total revenue miles flown..... | 74,535,115 | 58,108,773 | 57,667,157 | 53,241,983 | 49,531,606 | 45,810,669 | 56,075,500 | 52,077,133 | 74,535,115 | 58,108,773 | 57,667,157 | 53,241,983 | 49,531,606 | 45,810,669 | 56,075,500 | 52,077,133 |
| Nonrevenue miles..... | 1,557,656 | 853,722 | 2,154,272 | 2,466,916 | 1,397,449 | 1,220,253 | 1,182,397 | 1,557,656 | 1,557,656 | 853,722 | 2,154,272 | 2,466,916 | 1,397,449 | 1,220,253 | 1,182,397 | 1,557,656 |
| Total miles flown..... | 76,112,971 | 58,962,495 | 59,821,429 | 55,708,899 | 50,929,054 | 47,030,922 | 57,257,897 | 53,634,790 | 76,112,971 | 58,962,495 | 59,821,429 | 55,708,899 | 50,929,054 | 47,030,922 | 57,257,897 | 53,634,790 |
| PASSENGER TRAFFIC: | | | | | | | | | | | | | | | | |
| Number of revenue passengers carried..... | 4,843,813 | 3,477,374 | 2,820,523 | 2,462,466 | 2,072,680 | 1,569,372 | 3,438,965 | 2,670,141 | 4,843,813 | 3,477,374 | 2,820,523 | 2,462,466 | 2,072,680 | 1,569,372 | 3,438,965 | 2,670,141 |
| Revenue passenger-miles (000)..... | 2,467,833 | 1,739,523 | 1,730,950 | 1,411,737 | 1,512,497 | 1,106,196 | 2,548,545 | 1,956,523 | 2,467,833 | 1,739,523 | 1,730,950 | 1,411,737 | 1,512,497 | 1,106,196 | 2,548,545 | 1,956,523 |
| Nonrevenue passenger-miles (000)..... | 93,977 | - | 24,880 | - | 73,480 | - | 27,832 | - | 93,977 | - | 24,880 | - | 73,480 | - | 27,832 | - |
| Total passenger-miles (000)..... | 2,561,810 | - | 1,755,830 | - | 1,585,977 | - | 2,576,377 | - | 2,561,810 | - | 1,755,830 | - | 1,585,977 | - | 2,576,377 | - |
| Available seat-miles operated (000)..... | 3,302,093 | 2,467,762 | 2,298,758 | 2,039,475 | 1,986,081 | 1,685,013 | 2,392,980 | 1,914,000 | 3,302,093 | 2,467,762 | 2,298,758 | 2,039,475 | 1,986,081 | 1,685,013 | 2,392,980 | 1,914,000 |
| Revenue passenger-load factor..... | 74.74 | 69.64 | 77.30 | 69.25 | 76.15 | 65.65 | 64.90 | 64.90 | 74.74 | 69.64 | 77.30 | 69.25 | 76.15 | 65.65 | 64.90 | 64.90 |
| TON-MILES (ON REVENUE FLIGHTS): | | | | | | | | | | | | | | | | |
| Passenger (including free baggage)..... | 234,911,109 | 166,272,752 | 164,440,317 | 134,111,828 | 147,744,744 | 105,088,647 | 156,306,387 | 123,100,000 | 234,911,109 | 166,272,752 | 164,440,317 | 134,111,828 | 147,744,744 | 105,088,647 | 156,306,387 | 123,100,000 |
| U. S. mail - letter..... | 15,304,017 | 10,098,259 | 18,196,968 | 12,439,582 | 11,363,363 | 9,120,325 | 5,601,843 | 5,601,843 | 15,304,017 | 10,098,259 | 18,196,968 | 12,439,582 | 11,363,363 | 9,120,325 | 5,601,843 | 5,601,843 |
| U. S. mail - parcel post..... | - | - | Not Available | - | - | - | - | - | - | - | Not Available | - | - | - | - | - |
| Foreign mail..... | - | - | None | - | - | - | - | - | - | - | None | - | - | - | - | - |
| Express..... | 8,923,227 | 7,481,535 | 9,681,925 | 9,213,794 | 7,509,904 | 6,421,636 | 4,076,136 | 4,076,136 | 8,923,227 | 7,481,535 | 9,681,925 | 9,213,794 | 7,509,904 | 6,421,636 | 4,076,136 | 4,076,136 |
| Freight..... | 35,481,319 | 35,137,077 | 22,176,529 | 27,774,546 | 14,960,784 | 13,685,401 | 5,360,179 | 5,360,179 | 35,481,319 | 35,137,077 | 22,176,529 | 27,774,546 | 14,960,784 | 13,685,401 | 5,360,179 | 5,360,179 |
| Excess baggage..... | 2,457,061 | 2,037,731 | 1,362,685 | 1,251,548 | 1,213,139 | 1,093,132 | 2,040,697 | 2,040,697 | 2,457,061 | 2,037,731 | 1,362,685 | 1,251,548 | 1,213,139 | 1,093,132 | 2,040,697 | 2,040,697 |
| Total revenue ton-miles..... | 297,087,733 | 221,027,354 | 216,079,424 | 184,794,898 | 179,279,934 | 125,609,211 | 174,788,306 | 174,788,306 | 297,087,733 | 221,027,354 | 216,079,424 | 184,794,898 | 179,279,934 | 125,609,211 | 174,788,306 | 174,788,306 |
| Nonrevenue..... | 12,012,213 | - | 8,333,177 | - | 10,400,552 | - | 3,579,393 | - | 12,012,213 | - | 8,333,177 | - | 10,400,552 | - | 3,579,393 | - |
| Total revenue and nonrevenue ton-miles..... | 309,099,946 | 221,027,354 | 224,412,601 | 184,794,898 | 189,680,486 | 125,609,211 | 178,367,699 | 178,367,699 | 309,099,946 | 221,027,354 | 224,412,601 | 184,794,898 | 189,680,486 | 125,609,211 | 178,367,699 | 178,367,699 |
| Available..... | 431,416,170 | 331,107,979 | 342,929,684 | 312,889,115 | 267,484,542 | 222,272,163 | 331,138,956 | 331,138,956 | 431,416,170 | 331,107,979 | 342,929,684 | 312,889,115 | 267,484,542 | 222,272,163 | 331,138,956 | 331,138,956 |
| Percent revenue to available ton-miles..... | 68.86 | 66.75 | 63.01 | 59.06 | 67.03 | 60.92 | 52.75 | 52.75 | 68.86 | 66.75 | 63.01 | 59.06 | 67.03 | 60.92 | 52.75 | 52.75 |
| OPERATING PERFORMANCE FACTORS: | | | | | | | | | | | | | | | | |
| Scheduled miles..... | 75,298,623 | 59,139,307 | 59,934,612 | 52,921,243 | 52,278,608 | 46,481,975 | 54,689,371 | 51,156,516 | 75,298,623 | 59,139,307 | 59,934,612 | 52,921,243 | 52,278,608 | 46,481,975 | 54,689,371 | 51,156,516 |
| Scheduled miles flown..... | 73,595,997 | 56,714,835 | 56,772,086 | 51,858,059 | 48,978,888 | 45,109,668 | 53,899,349 | 50,039,639 | 73,595,997 | 56,714,835 | 56,772,086 | 51,858,059 | 48,978,888 | 45,109,668 | 53,899,349 | 50,039,639 |
| Percentage completed..... | 97.74 | 95.90 | 94.72 | 97.99 | 93.69 | 97.05 | 94.48 | 94.48 | 97.74 | 95.90 | 94.72 | 97.99 | 93.69 | 97.05 | 94.48 | 94.48 |
| USE OF AIRCRAFT: | | | | | | | | | | | | | | | | |
| Number of aircraft days assigned..... | 49,818 | 46,825 | 43,462 | 45,469 | 40,213 | 36,290 | 31,611 | 31,611 | 49,818 | 46,825 | 43,462 | 45,469 | 40,213 | 36,290 | 31,611 | 31,611 |
| Avg. rev. hrs. of use per day per aircraft.. | 6.56 | 5.50 | 6.18 | 5.54 | 6.24 | 6.47 | 9.39 | 9.39 | 6.56 | 5.50 | 6.18 | 5.54 | 6.24 | 6.47 | 9.39 | 9.39 |
| WEIGHTED AVO. ROUTE MILEAGE OPERATED | | | | | | | | | | | | | | | | |
| | 6,512 | 6,521 | 7,079 | 7,085 | 5,085 | 5,226 | 6,091 | 6,091 | 6,512 | 6,521 | 7,079 | 7,085 | 5,085 | 5,226 | 6,091 | 6,091 |
| NONSCHEDULED OPERATIONS | | | | | | | | | | | | | | | | |
| Revenue Miles Flown | 86,941 | 167,509 | 685,475 | 434,824 | 242,926 | 432,138 | 92,180 | 178,729 | 86,941 | 167,509 | 685,475 | 434,824 | 242,926 | 432,138 | 92,180 | 178,729 |
| Total Miles Flown | 86,941 | 167,509 | 685,475 | 434,824 | 242,926 | 432,138 | 92,180 | 178,729 | 86,941 | 167,509 | 685,475 | 434,824 | 242,926 | 432,138 | 92,180 | 178,729 |
| Revenue Ton-Miles | 394,507 | 788,968 | 3,219,306 | 1,515,822 | 932,375 | 1,257,514 | 373,433 | 580,363 | 394,507 | 788,968 | 3,219,306 | 1,515,822 | 932,375 | 1,257,514 | 373,433 | 580,363 |
| Available Ton-Miles | 569,538 | 1,162,737 | 4,322,125 | 2,420,375 | 1,662,842 | 2,085,441 | 668,776 | 1,137,917 | 569,538 | 1,162,737 | 4,322,125 | 2,420,375 | 1,662,842 | 2,085,441 | 668,776 | 1,137,917 |
| MILES FLOWN BY NONREVENUE TYPES OF AIRCRAFT | | | | | | | | | | | | | | | | |
| | | | | | 447,762 | 49,206 | 293,680 | 293,680 | | | | | 447,762 | 49,206 | 293,680 | 293,680 |

1/ Data not compiled.
Source: Data as reported on CAB Form 41 with only those corrections authorized by the carriers incorporated.
2/ Based on average annual revenue ton-miles flown during the three calendar years 1945-1947.
39142

CAB Form 41 with only those corrections authorized by the carriers incorporated.
revenue ton-miles flown during the three calendar years 1945-1947.

1179. IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

Civil Action No. 12041

NORTH AMERICAN AIRLINES, INC., Petitioner,

v.

CIVIL AERONAUTICS BOARD, Respondent

MOTION FOR LEAVE TO INTERVENE

American Airlines, Inc. (hereinafter sometimes referred to as "American") moves this Court pursuant to Rule 38(f) of the General Rules of the United States Court of Appeals for leave to intervene and become a party to the above-entitled proceeding. In support thereof, American Airlines, Inc., alleges as follows:

1. American Airlines, Inc. is a corporation organized under the laws of the State of Delaware and is the holder of certificates of public convenience and necessity from the Civil Aeronautics Board authorizing it to engage in air transportation with respect to persons, property and mail for Routes Nos. 4, 7, 25, 56 and FAM 26. Pursuant to these certificates, American engages in air transportation services between, among other points, New York, Chicago and Los Angeles. Petitioner in the above-entitled proceeding also engages in air transportation services between, among other points, New York, Chicago and Los Angeles.

1180 2. American Airlines, Inc. has operated under that name as a scheduled air carrier since 1934 and as an air carrier certificated under the Civil Aeronautics Act of 1938 since the completion of grandfather certificate proceedings. During that time, American has expended substantial sums of money, as well as time and effort, in establishing its name and reputation, and has created substantial goodwill attaching to the name "American Airlines, Inc." and such derivatives as "American" and "American Airlines."

3. By its application in Docket No. 5774 before the Civil Aeronautics Board, petitioner, an irregular air carrier

holding a letter of registration from the Civil Aeronautics Board under its then formal name, Twentieth Century Airlines, Inc., sought authority to use the name "North American Airlines, Inc." and variations thereof such as "North American Airlines" and "North American." American Airlines, on October 17, 1952, filed a memorandum in opposition to this application of Twentieth Century. In its memorandum American pointed out, among other things, that Twentieth Century's use of the "North American" name constituted an unfair competitive practice in violation of Section 411 of the Civil Aeronautics Act. At the same time American filed its petition to intervene in the matter of the Twentieth Century application Docket No. 5774.

4. By its order Serial No. E-7107, January 28, 1953, the Civil Aeronautics Board instituted as Docket No. 5928 an investigation to determine whether Twentieth Century Airlines, Inc., in using the name "North American Airlines," was engaging in activities and practices in violation of Section 411 of the Act. This investigation, Docket No. 5928, was consolidated with the Twentieth Century application, Docket No. 5774.

5. By its order Serial No. E-7174, February 19, 1953, the Civil Aeronautics Board permitted American to intervene in the said consolidated proceedings. In these proceedings, American maintained that the name "North American" constituted an infringement on the name "American" and amounted to an unfair method of competition against which American was entitled to protection under Section 411 of the Act; that use of the name "North American Airlines" engendered confusion, tended to create the impression that the carrier was operated by or affiliated with American, amounted to an appropriation of American's reputation and goodwill, and removed that reputation from the power of American to protect; and that the Civil Aeronautics Board should deny Twentieth Century's request for authority to use the name "North American Airlines", and order Twentieth Century to cease and desist from doing business under the name "North American Airlines" and variations thereof.

6. By its order Serial No. E-7870, November 4, 1953, the Civil Aeronautics Board denied petitioner's application under Docket No. 5774 and ordered petitioner to cease and desist from engaging in air transportation under the name "North American Airlines, Inc.," "North American Airlines," "North American" or any combination of the word "American". By its terms the said cease and desist order will become effective 90 days from the date of issuance.

7. North American Airlines, Inc. (previously 1182 Twentieth Century Airlines, Inc.) has petitioned this Court to review the said order of the Civil Aeronautics Board in Dockets Nos. 5774 and 5928.

8. American has a substantial property and financial interest in the subject matter of this proceeding. American's interest will be affected by the orders entered in the proceeding, and will not be adequately represented by any other party.

WHEREFORE, American Airlines, Inc., prays that it be permitted to intervene and become a party to these proceedings.

Respectfully submitted,

(Signed) HOWARD C. WESTWOOD,

JOHN W. DOUGLAS,

JEROME ACKERMAN,

701 Union Trust Building,

Washington 5, D. C.,

Attorneys for

American Airlines, Inc.

January 13, 1954.

COVINGTON & BURLING,

Of Counsel.

1183 UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

No. 12,041

NORTH AMERICAN AIRLINES, INC., Petitioner

v.

CIVIL AERONAUTICS BOARD, Respondent

AMERICAN AIRLINES, INC., Intervenor

Before

ORDER

On consideration of the matters transpiring at the pre-hearing conference held herein on February 4, 1954 and February 8, 1954 under Rule 38(k) of the Rules of this Court, and of the annexed stipulation between the parties which defines and limits the issues, stipulates certain facts, and establishes procedures and dates for the filing of briefs and the joint appendix to briefs, it is

Ordered that such stipulation be, and it hereby is, approved and shall control the subsequent course of this case unless hereafter modified by the Court.

Per CURIAM.

Dated: _____

1184 IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 12,041

NORTH AMERICAN AIRLINES, INC., Petitioner,

v.

CIVIL AERONAUTICS BOARD, Respondent,

AMERICAN AIRLINES, INC., Intervenor

PREHEARING CONFERENCE STIPULATION

After prehearing conferences pursuant to Rule 38(k) of the Rules of Court, the parties, subject to the approval of

the Court, hereby stipulate and agree as follows with respect to the issues, certain factual matters, and the procedure and dates for the filing of the briefs and joint appendix to briefs herein:

I

Issues

In the order under review (E-7870), the Civil Aeronautics Board determined "that the use by [petitioner] of the name North American Airlines, Inc., North American Airlines, North American, or any combination of the word American constitutes an unfair or deceptive practice and unfair method of competition within the meaning of Section 411" of the Civil Aeronautics Act (49 U. S. C. 491), and ordered petitioner to cease and desist from engaging in air transportation under any of these names or any name containing the word "American." Subject to the right of any

1185 party to take the position that any matter hereinafter set forth is surplusage and unnecessary to the Board's determination, or that any issue hereinafter set forth does not present a substantial question, the issues are agreed to be limited to the following:

(1) Whether the findings contained in the Board's report and Order E-7870, or any combination of them, establish a violation of Section 411, because of the use by petitioner of the name North American Airlines, Inc., North American Airlines or North American; and

(2) Whether the findings contained in the Board's report and Order E-7870 establish a secondary meaning connoting American Airlines, Inc., in the words "American" and "American Airlines;" and

(3) Whether the respondent Civil Aeronautics Board has made a finding that petitioner's use of the name North American Airlines, Inc., or of the word "American" in its name was fraudulent; and

(4) Whether the findings set forth in report and Order E-7870, hereinafter enumerated in substance, are supported by substantial evidence:

(a) That there is a confusing similarity between petitioner's corporate name and the name American Airlines, Inc.;

(b) That because of such similarity public confusion is probable;

(c) That such public confusion is likely to continue;

(d) That the terms "American" and "American Airlines" had acquired a secondary meaning in air transportation by virtue of prior usage by American Airlines, Inc., before petitioner adopted its trade name or changed its corporate name, and that such secondary meaning continues to exist;

1186 (e) That substantial public confusion has existed in the past, and is likely to continue, either because of the secondary meaning found to exist with respect to the words "American" and "American Airlines" or because of the similarity of the corporate names of petitioner and American Airlines, Inc., or both;

(f) That petitioner's use of a name containing the word "American" was fraudulent (assuming that the Board made such a finding);

(g) That petitioner's use of a name confusingly similar to that of American Airlines, Inc., was not accidental or inadvertent, but rather was knowing.

II

Facts Stipulated

1. That American Airlines, Inc., and petitioner are in competition in air transportation.

2. That American Airlines, Inc., was incorporated in Delaware on April 11, 1934, succeeding American Airways, Inc., which was incorporated in Delaware on January 25, 1930, and that the company has engaged continuously in the air transportation of persons, property and mail since the mentioned dates.

3. That petitioner was incorporated in North Carolina on May 4, 1946 as Twentieth Century Airlines, Inc., and holds a Letter of Registration as a Large Irregular Carrier issued in that name by the Civil Aeronautics Board. That peti-

tioner since April 21, 1951 has engaged in the air transportation of persons and property under the trade names of North American Airlines, Inc., North American Airlines, and North American, and that on March 3, 1952, it amended its articles of incorporation so as to change its name to North American Airlines, Inc.

1187

III

Limitation as to Use of Certain Evidence

Evidence going to the question of confusion relied on by the Board is limited in accordance with the last full paragraph of Point 1 of the Board's opinion appearing on Tr. 1039.

IV

Petitioner takes the position that the admissibility of evidence is in issue. Respondent and Intervenor take the position that Petitioner cannot raise any question of admissibility of evidence.

V

Procedure With Respect to Filing of Briefs and Joint Appendix to Briefs

For the purpose of eliminating needless printing and facilitating the work of the Court, the parties agree that the joint appendix to briefs will be printed and filed only after all briefs have been prepared and filed with the Court in accordance with the procedures hereinafter set forth.

In preparing and printing briefs, all record references shall be to the pages of the original transcript of record on file with the Court, and shall be designated as "Tr." The joint appendix shall be printed with the page numbers of the record as certified to this Court appearing at the place where each new record page begins on the printed page of the joint appendix, and running heads showing the record pages appearing thereon shall be printed at the outer top corner of each page of the printed joint appendix. The usual numerical pagination of the printed joint appendix will appear in the center of the page.

Petitioner will serve either page proof or final print of its brief upon respondent and intervenor on or before February 25, 1954, together with a precise designation of those portions of the transcript pages upon which it relies and which it wishes to have printed in the joint appendix. Respondent and intervenor will serve page proof or final print of their briefs on petitioner on or before March 17, 1954, together with precise designations of the portions of the transcript upon which they rely and which they desire to have included in the joint appendix. Petitioner will serve page proof or final print of its reply brief upon respondent and intervenor on or before March 27, 1954, together with a precise designation of any additional portions of the transcript upon which it relies and which it wishes to print. Printed copies of each such brief shall be filed with the Court not later than five days after the date hereinbefore specified for service upon the parties.

Immediately after March 27, 1954, petitioner shall cause to be printed and filed as promptly as possible the joint appendix to briefs. Such joint appendix shall contain the materials designated by the parties as heretofore provided, and in addition shall contain the following:

1. This stipulation and the order of the Court approving the stipulation.
2. Board Order E-7107 instituting investigation.
3. Board report and Order E-7870.
4. Motion for leave to intervene herein filed by American Airlines, Inc., and the order of the Court granting such motion (cost of printing of this item to be paid by American).

It is further agreed and stipulated, except insofar as modified by Paragraph III above, that any party and the Court, at and following the hearing in the case, may refer to any portion of the original transcript of record herein which has not been printed to the same extent and effect as if such portions of the transcript had been printed, it being understood that any portions of the record thus referred to will be printed in a supplemental

joint appendix if the Court at the time of argument directs same to be printed.

(Sgd.) HARDY K. MACLAY,
Attorney for Petitioner.

(Sgd.) JOHN H. WANNER,
Attorney for Respondent.

(Sgd.) HOWARD C. WESTWOOD,
Attorney for Intervenor.

1190² UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT, JANUARY TERM, 1954

No. 12,041

NORTH AMERICAN AIRLINES, INC., Petitioner,

v.

CIVIL AERONAUTICS BOARD, Respondent

Before Stephens, Chief Judge, and Edgerton and Wash-
ington, Circuit Judges, in Chambers

ORDER

Upon consideration of the motion of American Airlines, Inc., for leave to intervene and become a party in the above entitled case, and it appearing that no opposition to said motion has been filed, it is

Ordered by the Court that the aforesaid motion be, and it is hereby, granted.

Dated: January 28, 1954.

Per CURIAM.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Leave to Intervene was served this date upon North American Airlines, Inc., by mailing copies thereof, postage prepaid, to its counsel of record, Hardy K. Maclay and Walter D. Hansen, 1317 F Street, N. W., Washington, D. C., and upon the Civil Aeronautics Board by mailing copies thereof, postage prepaid, to its General Counsel, Emory T. Nunneley, Civil Aeronautics Board, Commerce Department, Washington, D. C.

JEROME ACKERMAN.

January 14, 1954.

Pages 313 through 410 omitted in printing

411

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12041

NORTH AMERICAN AIRLINES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT
AMERICAN AIRLINES, INC., INTERVENOR

On Petition for Review of Order of the
Civil Aeronautics Board

Decided June 23, 1955

Mr. Hardy K. Maclay, with whom *Mr. Walter D. Hansen* was on the brief, for petitioner.

Mr. Gerald F. Krassa, Attorney, Civil Aeronautics Board, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, with whom *Messrs. Emory T. Nunneley, Jr.*, General Counsel, Civil Aeronautics Board, *John H. Wanner*, Associate General Counsel, Civil Aeronautics Board, and *James L. Highsaw, Jr.*, Chief, Litigation and Research Division, Civil Aeronautics Board, were on the brief, for respondent. *Messrs. O. D. Ozment*, Attorney, Civil Aeronautics Board, and *Charles H. Weston*, Attorney, Department of Justice, also entered appearances for respondent.

Mr. Howard C. Westwood, with whom *Messrs. John W. Douglas* and *Jerome Ackerman* were on the brief, for intervenor.

Before *PRETTYMAN*, *FAHY* and *DANAHER*, Circuit Judges.

DANAHER, *Circuit Judge*: Petitioner asks review of a Board order which denied petitioner's application for authority to engage in air transportation under the name North American Airlines, Inc., and which further ordered the petitioner, "its successors, assignees, representatives, agents, officers and employees . . . to cease and desist from engaging in air transportation under the names North American Airlines, Inc., North American Airlines, North American, or any combination of the word 'American.' "

Petitioner, holder of Letter of Registration No. 528 issued to Twentieth Century Airlines, Inc., July 22, 1947, is an irregular air carrier engaged in air transportation primarily between New York, Chicago, Kansas City and Los Angeles. About May 21, 1951, petitioner commenced operations under the trade names of North American Airlines and North American, and on March 3, 1952, petitioner changed its corporate name to North American Airlines, Inc. By letter dated March 11, 1952, petitioner advised the Board of its change of name and sought reissue of its Letter of Registration accordingly. Without then acting upon petitioner's application, the Board on August 19, 1952 amended its regulations to provide that on and after November 15, 1952 an irregular carrier might hold out to the public and perform air transportation services only in the name appearing in its Letter of Registration.

The Board's introductory comment to its new Economic Regulations, § 291.28 pointed out that where good will had been established in a name by use thereof, the Board would deny permission to continue such name only in cases where it believed that a violation of § 411 of the Act¹ might be involved and where such fact had been

¹ 49 U.S.C. § 491 (1952), which reads in part as follows:

"The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket

established after notice and opportunity for a hearing. On October 6, 1952 petitioner, pursuant to the new regulation, applied to the Board for authorization to conduct its operations under its corporate name rather than as Twentieth Century Airlines, Inc. In support of its application, petitioner set out that it had invested "substantial" sums of money in the name North American Airlines and had established "substantial" good will in that name at a time when there was no Board regulation of the names of air carriers.

American Airlines, Inc., was allowed to intervene in opposition to petitioner's application, representing, principally, that the name "North American" infringed upon the established name of American and constituted unfair competition within the meaning of § 411 of the Act, and further urging that North American had no vested right or established good will in the name "North American" which the Board was bound to recognize. Thereupon the Board ordered an investigation to determine whether petitioner's engaging in air transportation under the names North American Airlines, Inc., North American Airlines, or North American was in violation of § 411 and, if so, whether the Board should issue a cease and desist order accordingly, and this investigation was consolidated for hearing and decision with North American's application.

The Board found (1) that American Airlines and North American Airlines are in competition in air transportation; (2) that American Airlines was incorporated, *eo nomine*, and that the term "American" had acquired a secondary meaning before North American adopted the trade name of, and changed its corporate name to, North

agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof."

American Airlines; (3) that the substantial public confusion found herein was likely to continue; (4) that use of the name "North American Airlines, Inc.," "North American Airlines," "North American" or any combination of the word "American" constitutes an unfair or deceptive practice and an unfair method of competition within the meaning of § 411 of the Act; (5) that the public interest required denial of the application for authority to engage in air transportation under the name North American Airlines, Inc.; and (6) that petitioner and its successors, assignees, representatives, agents, officers and employees should be ordered to cease and desist from engaging in air transportation under the names listed in (4), above.

Thereupon, the Board, one member dissenting, entered its order, drastic, as it knew,² and unprecedented, so far

² "We are well aware that an order requiring respondent to cease and desist using the name under which it has been engaging in air transportation is a serious sanction which necessarily involves disturbance and loss to the carrier. We do not impose such a measure lightly. But the record is convincing that the public interest requires this action in order to prevent further public confusion between respondent and intervenor due to similarity of names. The maintenance of high standards in dealing with the public is expected of common carriers, and the public has a right to be free of the inconveniences which flow from confusion between carriers engaging in the transportation of persons by air. The speed of air travel may well be diminished when passengers check in for flights with the wrong carrier, or attempt to retrieve baggage from the wrong carrier, or attempt to purchase transportation from the wrong carrier, or direct their inquiries to the wrong carrier. Friends, relatives or business associates planning to meet passengers or seeking information on delayed arrivals are subject to annoyance or worse when confused as to the carrier involved. The proper handling of complaints from members of the public is impeded by confusion as to the carrier to whom the complaint should be presented. The transportation itself may differ from what the confused purchaser has anticipated (e.g., in

as we have been shown. It purported to predicate public interest upon the "confusion,"³ attributable to North American's "knowing" use of a "confusingly similar name" to that of American. Its brief tells us that there were "six groups of confused members of the public, namely: (1) ticket holding passengers, (2) persons meeting passengers, (3) persons making inquiry regarding transportation, (4) persons having business with petitioner [North American], (5) the Post Office, and (6) the public press." Our examination of the record and the exhibits discloses, (1) some North American passengers with North American tickets in their hands presented themselves at American ticket counters; (2) some people intending to meet North American passengers called American Airlines "information" or ticket counters to ask about the arrival of North American flights; (3) some people who heard North American radio advertising of deferred payment flight plans called American Airlines for particulars as to how North American's "fly now—pay later" program operated: American offered no such plan; (4) "persons having business" were (a) a painter's union official who telephoned to American to protest that a sign was being painted by non-union painters but was assured this was a North American sign; (b) a hotel in Kansas City where North American had "hotelled" its passengers sent its bill to American; (c) a radio repair service telephoned to American about a

terms of equipment), even though the time and place of arrival may be about the same. It is obvious that public confusion between air carriers operating between the same cities is adverse to the public interest, and we have determined that the public should be protected from the effects of the confusion shown on the record by eliminating what we find to be the cause of such confusion."

³ See note 2, *supra*.

North American bill for \$13; (d) a tailor who addressed a North American tailoring charge for \$18 to American although the street number was that of North American; (5) the Post Office misdelivered to American (a) one correctly addressed envelope intended for North American; (b) the tailor bill mentioned in (4)(d) above; (c) in Burbank where both lines had ticket counters at the terminal, a witness said some 6 to 12 envelopes came to the American counter but were intended for the North American counter; (6) a robbery of a North American ticket office was described in the newspapers as having occurred at American's office.

The Board offered no evidence whatever. We have already noted the nature and the gist of such evidence as was offered which was supplied by employees of the intervenor, American, and upon such the Board rested its finding of "confusion." Board Member Adams in his dissent commented:

"Since American Airlines, Inc., carries approximately 51½ million passengers each year over its system; I am not impressed with the fact that witnesses in this case (principally those employed by American Airlines itself) have testified that some confusion has existed. . . . On the contrary, I would be greatly surprised, (in view of the several million phone calls and other communications which American Airlines receives every year over and above those received from passengers which it actually carries) if there were not *some* demonstrable public confusion"

The Board also concluded that the word "American," as used by the intervenor, had acquired a secondary meaning, that intervenor had long engaged in extensive advertising of its services under that name, and that this "practice has helped to instill in the minds of the public the notion that the word 'American' when used in connec-

tion with domestic air transportation denotes American Airlines." In this particular it did not "overlook" "the recent use of the word American in the name of the sectional local service carrier All American Airways," the "recent use of the word American in the name of the irregular carrier Air America," and the international "use of American in the name Pan American World Airways." In this connection it should be noted that American Airlines, Inc., since 1934, and its predecessor American Airways, Inc., since 1930, had continuously been engaged in air transportation. In 1949 American Airlines, Inc., registered in the Patent Office as a service mark the two words in combination, "American Airlines."⁴

No ticket agents were parties to the proceeding, nor was there evidence as to their engaging in proscribed practices within the meaning of the Act, but they as a class, throughout the nation, have been brought within the sweep of the Board's order.

The Board rejected, and decided, it "need not comment" upon, its Examiner's finding:

"There is no evidence of record that North American adopted its name with intent to deceive the public or trade upon the good-will and business reputation of American, or that American has been injured by such operation"

Our examination of the record demonstrates that the Examiner was correct. Nor is there evidence that North American palmed itself off as American; that North American "confused" American's passengers to the former's advantage; that North American's advertising was

⁴ Even were we to assume that such registration is here significant, the likelihood of consumer-confusion is still the test of secondary meaning. *Charles D. Briddell, Inc. v. Al-globe Trading Corp.*, 194 F. 2d 416, 421 (2d Cir. 1952).

intended to or did entice American's passengers to fly North American, indeed it is difficult to assume that North American's advertising could be of the slightest advantage unless it could bring passengers to North American, rather than American. Nor is there evidence that North American flew a single passenger who paid its lower rate in the thought that he contracted for anything but North American's non-scheduled transportation, or that American was harmed otherwise than by the competition afforded by any irregular carrier. In short, the public may have benefited, so far as the record shows, and in any event, there is no demonstration that North American affirmatively acted in violation of a statute within the jurisdiction of the Board.

Except as just noted, the Board adopted, almost *in toto*, the findings of the Examiner, and we quote once more:

"There is no question but what American has acquired during the past 20 years through its constant efforts a good-will in its use of the name 'American' or 'American Airlines,' which has become a valuable asset to be protected. However, an action for infringement of American's trade name can find its remedy in the courts. Section 411 was not designed for the purpose of protecting the private rights of an individual carrier except to the extent of regulating competition between the various air carriers to assure fair competition and thereby maintain a sound economic transportation system; also, equally important, the Board was given the responsibility of safeguarding the public interest against unfair and deceptive methods of competition."

The Examiner came almost to the heart of the problem; his error, like that of the Board, stems from the application of criteria which fell short of the public interest findings demanded by the law.

II

"The Civil Aeronautics Act was enacted at a critical stage in the air transport industry, struggling to survive in the face of excessive competition and a number of other adverse factors. The Act was designed to bring out of chaos a system of regulated competition and the encouragement and promotion of civil aviation, not only in the interests of commerce but also in the interests of national defense." *United Air Lines v. Civil Aeronautics Board*, 198 F. 2d 100, 105 (7th Cir. 1952). "It is also clear that the purpose of the Act is not primarily to advance the private interests of carriers, but the public interest in an adequate air transport system." *Id.* at 107. And see *Civil Aeronautics Board v. State Airlines*, 338 U.S. 572, 578 (1950).⁵

The Act was the culmination of years of groping. By 1937, it became clear that Congress was determined to formulate an over-all policy for the regulation of air transportation. Senator Harry S. Truman as chairman of

⁵ Section 2 of the Act, 49 U.S.C. § 402 (1952), in pertinent part reads:

"In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest . . .

"(a) The encouragement and development of an air-transportation system properly adapted to the present needs of the . . . domestic commerce of the United States. . .

* * * *

"(c) The promotion of adequate, economical and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

"(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the . . . domestic commerce of the United States. . . ."

a Subcommittee of the Senate Committee on Interstate Commerce opened hearings on S. 2 and S. 1760. Representatives of the Air Line Pilots Association denounced the practices of an air line which had been "cheating the pilots out of some measure of the pay which was rightly theirs by means of juggling the seniority of their pilots" and of another air line which "was deliberately flying its pilots far in excess of the maximum flying hours permitted" By such means, it was charged, some bidders for air mail contracts were gaining advantages over others. The Solicitor of the Post Office Department testified that in the past many of the mail contracts had been held or controlled by holding companies and banking interests. Some air lines, he said, had been affiliated with manufacturers from whom they were required to purchase their equipment and to pay prices fixed by the manufacturing companies. There had been interlocking boards of directors, and many if not most of the lines had been dominated by other than practical air line operators. At one time three holding companies had controlled 92 per cent of the air mail contracts then in existence. Some air mail contractors had invaded the territory of others with competitive "off-line" service. When two competitors had submitted bids for the same mail contract the company awarded the contract was bought out by its competitor. Without more than these few cursory references to various situations described to the Senate committee, enough has been said to suggest that sharp conflict and acrimonious exchanges alerted the Congress to the need for action. The spokesman for the leading air lines testified, in part, that ". . . contrary to the condition in any other form of transportation, the Government of the United States is, and for a long time will be, the largest single customer of the air carriers, and in particular cases, among the smaller lines,

this patronage on the part of the Government may exceed the total patronage of all other customers.”⁶

One cannot study the testimony at the hearings without an abiding feeling that the “public interest” concept engrossed or even dominated all concerned. Large outlays of public funds were to be required to aid in promoting the healthy growth of the air transportation industry. Special provisions were written into the legislation to deal with specific and demonstrated past abuses.⁷ Encouragement of competition had a definite place in the declaration of policy, just as the Board “in the interest of the public,” not in furtherance of the private interests of one entity as against another, was empowered to deal with unfair practices or unfair methods of competition.

Undoubtedly the draftsmen realized that many situations would arise which could not with particularity be spelled out in the proposed counterpart of § 411.⁸ It considered the advice of Commissioner Eastman.⁹ “Now, these two bills you have before you follow the usual pattern of regulatory bills. And you will find that much of the language is similar to language which is now already in the law with reference to railroads or with reference to

⁶ *Hearings before United States Senate Subcommittee of the Committee on Interstate Commerce on S. 2 and S. 1760, 75th Cong., 1st Sess. 454 (1937).*

⁷ See, generally, for the business regulative features, §§ 408-416 of the Act, 49 U.S.C. §§ 488-496 (1952). As additional background, see *Two Decades—Federal Aero-Regulation in Perspective*, 12 *Journal of Air Law and Commerce* 105 (1941).

⁸ Cf. the court’s summary of the Board’s argument in *Hawaiian Airlines v. Trans-Pacific Airlines*, 78 F. Supp. 1, 5 (D. Hawaii 1948).

⁹ Chairman of the Legislative Committee of the Interstate Commerce Commission testifying, *Hearings, supra* note 6, at 70.

motor carriers. *That, I think, is a desirable thing, because when language has been interpreted once it is desirable to have it used again; thus avoiding many questions always arising with respect to the employment of new language.*" (Emphasis supplied.) He continued that the pending section "with respect to unfair methods of competition is, I believe, substantially a duplicate of the provisions under the Federal Trade Commission Act, by which the Commission is empowered to prevent unfair methods of competition in ordinary industrial enterprises. I have not studied the decisions of the Federal Trade Commission enough so that I have any clear idea of how far the question of unfair methods of competition may go; and, that is another matter I should like to go further into. But I see no reason, if kept within proper limits, why that provision is objectionable."¹⁰

Thus it adapted to meet prospective needs § 5 of the Federal Trade Commission Act¹¹ and with it, the body of law which had grown up around it. Senator Truman told the Senate, and all parties here concede, that § 411 was so modeled, and we will therefore look to the decisions construing that section to discern the allowable limits for our action.

III

Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs." *Federal Trade Comm'n v. Klesner*, 280 U.S. 19, 25 (1929). "In determining whether a proposed proceeding will be in the public interest the Commission exercises a broad discretion. But the mere fact that it is to the interest of the community that pri-

¹⁰ *Id.* at 74.

¹¹ 15 U.S.C. § 45 (1952).

vate rights shall be respected is not enough to support a finding of public interest. To justify filing a complaint the public interest must be specific and substantial." *Id.* at 28. See also, *Federal Trade Comm'n v. Milling Co.*, 288 U.S. 212, 217 (1933). "This requirement is not satisfied by proof that there has been misapprehension and confusion on the part of purchasers, or even that they had been deceived,—the evidence commonly adduced by the plaintiff in 'passing off' cases in order to establish the alleged private wrong. . . . But to justify the Commission in filing a complaint under § 5, the purpose must be protection of the public." *Federal Trade Comm'n v. Klesner*, *supra* at 27.

"The words 'unfair method of competition' are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade." *Federal Trade Comm'n v. Gratz*, 253 U.S. 421, 427-8 (1920).¹²

What may be "unfair methods of competition" will not admit of precise definition and "are thus to be determined in particular instances, upon evidence, in the light of par-

¹² For other instances of practices found to constitute unfair methods of competition, see *Federal Trade Comm'n v. Milling Co.*, 288 U.S. 212, 217 (1933); *Federal Trade Comm'n v. Keppel & Bro.*, 291 U.S. 304, 310 *et seq.* (1934); *Federal Trade Comm'n v. Cement Institute*, 333 U.S. 683, 690, 691 (1948), and cases cited; cf. *Federal Trade Comm'n v. Bunte Bros.*, 312 U.S. 349, 354 (1941).

ticular competitive conditions and of what is found to be a specific and substantial public interest." *Schechter Corp. v. United States*, 295 U.S. 495, 533 (1935). Protection of the public interest is made of paramount importance, *Federal Trade Comm'n v. Raladam Co.*, 283 U.S. 643, 648 (1931), and even if the Board finds the existence of some unfair method of competition, it "still may not proceed unless it further appear that a proceeding would be to the interest of the public, and that such interest is specific and substantial." *Id.* at 649.¹³

The principles thus enunciated lose none of their force because of the 1938 amendment to § 5 of the Federal Trade Commission Act, indeed they are emphasized in their applicability to the consumer rather than merely to the merchant or the manufacturer. See *Federal Trade Comm'n v. A. P. W. Paper Co.*, 328 U.S. 193, 199 n.4 (1946). In the light of such teaching, therefore, we must approach our present problem. We have found no case with a reach such as is here sought to be applied, indeed it would appear there has been no previous Board decision in which the Board has so sweepingly extended its sway.¹⁴

IV

If this were a private suit in which American had charged North American, with trade-mark infringement and unfair competition, we would be bound to weigh considerations differing from the public interest criteria

¹³ It would seem that the function of the Board like that of the Commission in situations such as this has limitations; certainly under the guise of prohibiting unfair or deceptive practices or unfair methods of competition, it may not impose a code of fair competition upon an industry. Cf. *Schechter Corp. v. United States*, 295 U.S. 495, 531-533 (1935); *New American Library v. Federal Trade Comm'n*, 213 F. 2d 143 (2d Cir. 1954).

¹⁴ See note 2, *supra*.

which must govern our opinion. Myriad cases in the first named categories have compelled the notice of the courts, as may be demonstrated by reference to a few recent decisions.¹⁵ "For our purpose, cases brought in the federal courts in the field of unfair competition (not including Federal Trade Commission cases) may be divided into six categories" said the court in *Philco Corporation v. Phillips Mfg. Co.*, 133 F.2d 663, 666 (7th Cir. 1943), and fruitful reference may be made to the analysis found at pages 666-667. Developments in this field are also discussed at interesting and valued length by Judge Frank, concurring, in *Standard Brands v. Smidler*, 151 F. 2d 34, 37 (2d Cir. 1945). He observes, *Id.* at 38 n.2, "The trade-name monopolies arising under the Federal Trade Commission Act are in a different category." If this were a private suit, whether American's registration of "American Airlines" as a service mark gives it anything more than a procedural advantage, *Armstrong Co. v. Nu-Enamel Corp.*, 305 U.S. 315, 324 (1938), whether the Lanham Act, 15 U.S.C. §§ 1051-1127 (1952), confers a new federal right against unfair competition, *Charles D. Bridgell, Inc. v. Alglobe Trading Corp.*, 194 F. 2d 416, 421 (2d Cir. 1952), or whether the mere likelihood of confusion of the public

¹⁵ *Hyde Park Clothes v. Hyde Park Fashions*, 204 F. 2d 223 (2d Cir. 1953), *cert. denied*, 346 U.S. 827 (1953); *Charles D. Bridgell, Inc. v. Alglobe Trading Corp.*, 194 F. 2d 416 (2d Cir. 1952); *Admiral Corp. v. Penco, Inc.*, 203 F. 2d 517 (2d Cir. 1953); *S. C. Johnson & Son, Inc. v. Johnson*, 116 F. 2d 427 (2d Cir. 1940); *Q-Tips, Inc. v. Johnson & Johnson*, 206 F. 2d 114 (3d Cir. 1953), *cert. denied*, 346 U.S. 867 (1953); *Radio Shack Corp. v. Radio Shack*, 180 F. 2d 200 (7th Cir. 1950); *Best & Co. v. Miller*, 167 F. 2d 374 (2d Cir. 1948); *McGraw-Hill Pub. Co. v. American Aviation Associates*, 73 App. D.C. 131, 117 F. 2d 293 (D.C. Cir. 1940); *Mastercrafters Clock Co. v. Vocheron Watches, Inc.*, 105 U.S.P.Q. 160, — F. 2d — (2d Cir. 1955); *G. B. Kent & Sons v. P. Lorillard Co.*, 114 F. Supp. 621 (S.D.N.Y. 1953), *aff'd*, 210 F. 2d 953 (2d Cir. 1954).

as between the goods and services of the parties will predicate relief, may become important or even controlling factors after test by appropriate defenses.

But we are not here concerned with the possibility that American might prevail in private litigation, and nothing we say is intended to bear one way or the other upon issues which might develop in such an action. The Board in its brief tells us that "Petitioner's name is differentiated from intervenor's only by the addition of a one-syllable prefix." It cites cases accordingly. *Material M. M. Ass'n v. New York M.M.M. Ass'n*, 169 App. Div. 843, 155 N.Y.S. 706, 710 (1st Dept. 1915); *American Thread Co. v. North American Thread Co.*, 33 F. Supp. 616 (S.D.N.Y. 1935); *Speed Products Co. v. Timmerman Products*, 179 F. 2d 778, 780 (2d Cir. 1949); *American Home Benefit Ass'n v. United American Benefit Ass'n*, 63 Idaho 754, 125 P. 2d 1010 (1942); *Northern Metal Co. v. Maier*, 337 Pa. 257, 11 A. 2d 140 (1940); *Navy Club v. All-Navy Club*, 85 F. Supp. 679, 682 (D.R.I. 1949). But were we to say that private injury criteria must govern the issue here, we would also be bound to observe that these and offsetting cases point up clearly that there is no inflexible rule and the circumstances in each situation must be considered: See, e.g., *McGraw-Hill Pub. Co. v. American Aviation Associates*, 73 App. D.C. 131, 117 F. 2d 293 (D.C. Cir. 1940) ("American Aviation" and "Aviation"); *Pure Oil Co. v. The Pep Boys*, 76 U.S. App. D.C. 19, 128 F. 2d 34 (D.C. Cir. 1942); *Eastern Wine Corp. v. Winslow Warren, Ltd.*, 137 F. 2d 955, 956 (2d Cir. 1943), cert. denied, 320 U.S. 758 (1943) ("Chateau Martin" and "Chateau Montay"); *Fawcett Publications v. Bronze Publications*, 173 F. 2d 778 (5th Cir. 1949) cert. denied, 338 U.S. 869 (1949) ("True Confessions" and "Bronze Confessions"); *Coca-Cola Co. v. Snow-Crest Beverages*, 162 F. 2d 280 (1st Cir. 1947), cert. denied, 332 U.S. 809 (1947) ("Coca-Cola" and "Polar Cola").

Even in the last named cases the test could be said to be whether the addition of a prefix or an extra nominate term renders the corporate name "so distinct that confusion is unlikely." *Pure Oil Co. v. The Pep Boys, supra* at 19.

Perhaps the injection of one additional idea will suffice to show how murky are the waters in which the Board would fish. In *Columbia Mill Company v. Alcorn*, 150 U.S. 460, 466 (1893), the Court said: "The appellant was no more entitled to the exclusive use of the word 'Columbia' as a trade-mark than he would have been to the use of the word 'America,' or 'United States,' or 'Minnesota,' or 'Minneapolis.' These merely geographical names cannot be appropriated and made the subject of an exclusive property." Cf. *Durable Toy & Novelty Corporation v. J. Chein & Co.*, 133 F. 2d 853, 855 (2d Cir. 1943), *cert. denied*, 320 U.S. 211 (1943), where Judge Learned Hand pointed out that "... 'Uncle Sam' is part of the national mythology, not entirely unlike the flag, or any other part of our inherited patriotic paraphernalia; all have a measurable interest in its use"; *Patent Paint Co. v. Sunset Paint Co.*, 53 App. D.C. 348, 351, 290 Fed. 323 (D.C. Cir. 1923), where this court considered Sun as publici juris. Congress "has been given no power to legislate upon the substantive law of trade-marks," and it reasonably may be assumed that "the intention was to allow the registration of such marks as that law, and the general law of unfair competition of" which it is a part, recognized as legitimate." *American Foundries v. Robertson*, 269 U.S. 372, 381 (1926). The Court continued at 383, "There may be, of course, instances where a single word in the corporate name has become so identified with the particular corporation that whenever used it designates to the mind of the public that particular corporation. But it is not here shown that, standing alone, the word 'Simplex' has that effect; that it is any

more calculated to denote to the public the defendant corporation than any of the other corporations in the names of which it is likewise embodied; or, indeed, that it signifies the appropriation of some corporate name though incapable of exact identification.

There are many instances, of which the public must be presumed to have knowledge, of similarities in airlines designations indicating a not uncommon practice of this sort in the air transportation industry. Exhibits in the record here disclose airlines routes allocated by the Board to All American Airways, Inc., American Airlines, Inc., Northeast Airlines, Inc., Eastern Air Lines, Inc., Northwest Airlines, Inc. and Western Airlines, Inc. Pan American and Air American were previously mentioned.¹⁶ Phonetic differences, lack of emphasis in petitioner's use of the disputed term, possible failure of the intervenor's advertising campaigns, differences in service, rates and the elements of the airlines traveling public each has sought to reach, would seem to serve here to distinguish the two competing companies. Were we to continue this collateral discussion we might observe with the court in *Eastern Wine Corp. v. Winslow Warren, Ltd.*, 137 F. 2d 955, 960 (2d Cir. 1943), *cert. denied*, 320 U.S. 758 (1943): "The issue in such a case as this is 'whether an appreciable number of prospective purchasers of the goods * * * are likely' to be confused. 'That a few particularly undiscerning prospective purchasers might be misled is not enough.'" Even in such adversary litigation between competitors, the obligation resting upon one is not to insure that every purchaser will distinguish it from

¹⁶ Exhibits in the Congressional hearings, *supra*, note 6, disclose air mail contractors such as North American Aviation, Inc., American Airlines, Inc., Northwest Airlines, Inc., Western Air Express Corp., Transcontinental and Western Air, Inc., National Park Airways, Inc. and National Air Transport.

its competitor, but only to use "reasonable means to prevent confusion." *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 121 (1938). "A new competitor is not held to the obligations of an insurer against all possible confusion. He is not obligated to protect the negligent and inattentive purchaser from confusion resulting from indifference. *Skinner Mfg. Co. v. General Foods Sales Co., Inc.*, D.C., 52 F. Supp. 432, 433, 450. It has been said that he is not required to make the market 'foolproof.' [Citing cases]. " * * * Instead, they are required only to mark or designate them in such manner that purchasers exercising ordinary care to discover whose products they are buying will know the truth and not become confused or mistaken. * * * " *Life Savers Corp. v. Curtiss Candy Co.*, 182 F. 2d 2, 8 (7th Cir. 1950). See also, *McGraw-Hill Pub. Co. v. American Aviation Associates*, 73 App. D.C. 131, 117 F. 2d 293 (D.C. Cir. 1940).

Against the foregoing background, perhaps already too extensively portrayed, one thing seems crystal clear: that if Congress has "been given no power to legislate upon the substantive law of trade-marks" it is utterly unlikely that Congress constituted the Board a forum to adjudicate the complicated issues arising in this field. We will not say that under no circumstances can name appropriation in simulation of or in general resemblance to the name of another air line result in an unfair trade practice or an unfair method of competition, quite the contrary.¹⁷ But the mere combination of the words "North"

¹⁷ See, e.g., *Aetna Casualty & Surety Co. v. Aetna Auto Finance*, 123 F. 2d 582, 584 (5th Cir. 1941), cert. denied, 315 U.S. 824 (1942), and cases cited; *Greyhound Corporation v. Goberna*, 128 F. 2d 806 (5th Cir. 1942); *Standard Oil Co. of Maine v. Standard Oil Co. of New York*, 45 F. 2d 309 (1st Cir. 1930); *Standard Oil Co. of New Mexico v. Standard Oil Co. of Cal.*, 56 F. 2d 973, 977 (10th Cir. 1932), and cases cited in note 1.

and "American," the latter so commonly used in business enterprises, even in the airlines industry, without more—much more than is disclosed upon this record—is not the unfair practice or the unfair method of competition over which the Board, in the public interest, has jurisdiction. Our duty is to "make certain that the legislative enactment is within Constitutional limitations, that the executive program is within statutory limitations, and that a disputed executive action is within the terms of the legislative mandate, fairly based on facts fairly found, and not arbitrary, capricious or fanciful." *United Air Lines v. Civil Aeronautics Board*, 81 U.S. App. D.C. 89, 91, 155 F. 2d 169 (D.C. Cir. 1946).

V

What Congress in the public interest sought to reach in its original § 411 of the Act may be illustrated by what was said of the recent amendment extending the provision to "ticket agents."¹⁸ Types of practices and abuses were carefully spelled out,¹⁹ each of the sort for

¹⁸ Act of July 14, 1952, 49 U.S.C. § 491 (1952).

¹⁹ House Rep. No. 2420, 82d Cong., 2d Sess. (1952), reads in part:

"The necessity for the proposed legislation is occasioned by the fact that a number of ticket agents have engaged in flagrant abuses and deceptions in the sale of air transportation to the great detriment of the public. For example, ticket agents have engaged in such practices as the following:

"(1) Deceptive advertising and other public representations which induce the public to believe that the agent is an air carrier and to rely on such agent to provide the air transportation service offered when in fact the agent is not authorized to engage in air transportation but is depending upon the performance of the service by some authorized air carrier undisclosed to the prospective passenger and in many instances unknown to the agent at the time the representa-

which a public body might be expected to provide a remedy in the public interest where resort by an individual

tion is made or the same is consummated.

"(2) Deceptive and misleading advertising and other public representation as to the quality and kind of service, cost, type and size of aircraft, times of departure and arrival, points served, route to be flown, stops to be made, and total trip time from point of departure to designation.

"(3) Offer and sale of air transportation without regard to the rates, fares, and charges specified in the tariffs of air carriers represented, discriminating between passengers, charging some more and some less than lawful tariff rates, demanding and collecting extra improper charges which in some instances are exacted to make up the difference between the lower rate offered purposely as a 'come-on' to bring the prospective purchaser to the agent's place of business and the correct rate which should have been advertised to the public.

"(4) Selling air transportation on a reservation basis when the agent has no binding commitment with any air carrier to provide the service. In such instances the passenger is later informed that the flight will be delayed, or he finds upon arrival at the airport that there is no space for him, or that there is no flight as represented. The passenger then must wait until the agent finally arranges for this passage on another flight or another carrier which may be hours or days later and may be at a higher fare or under less desirable circumstances or on less desirable types of aircraft than that represented at the time of sale.

"(5) Falsely representing that passengers are directly insured in large amounts when in fact no such insurance is in force.

"(6) Falsely representing that special 'priorities' for reservations and special discounts are available, particularly for persons in military service when in fact no such special considerations are available.

"(7) Failure and refusal to make proper refunds when flights are not available or only partially completed.

"These practices arose with the development of the irregular air carrier operations after the close of World War II and have become more widespread and serious each year.

to the courts would largely be fruitless or impracticable. As the Federal Trade Commission Act's § 5 had been made the model, so, too, in the Civil Aeronautics Act, § 411 was a novelty. It was a "new device" introduced by Congress "in the hope thereby of remedying conditions in business which a great majority of the American people regarded as menacing the general welfare, and which for more than a generation they had vainly attempted to remedy by the ordinary processes of law." It was believed that widespread and growing concentration in industry and commerce restrained trade and that monopolies were acquiring increasing control of business." Mr. Justice Brandeis, dissenting, in *Federal Trade Comm'n v. Gratz*, 253 U.S. 421, 432 (1920). It would seem that without more, protection by the Board of a name monopoly, employing the vast force of the United States in its support, is far outside the scope of the powers entrusted to the Board. Especially do we so conclude upon reconsideration of the Act's pertinent policy declarations, set forth in note 2, *supra*.

We are reinforced in our conviction by a review of the leading cases²⁰ in which the Supreme Court has clearly taught the nature and the substance of the public interest to be considered and the criteria to be applied in proceedings under the Federal Trade Commission Act. Since that body of law likewise surrounds the bare bones of § 411 of the Act before us, we must be guided accordingly. Given an order in a case which falls within the standards of illegality thus connoted, with adequate explanation of the reasons why the public interest demands such an order, and a determination based upon adequate supporting evidence that the respondent has engaged in the conduct to be condemned, we will sustain the Board.

²⁰ See appendix.

This is not such a case, and when as a matter of law we so conclude, it is our duty to set aside the Board's order. We do so.

Reversed.

APPENDIX

The following succinct summary of some of the leading cases referred to in note 20 of the opinion may prove of convenience to counsel.

Federal Trade Comm'n v. Gratz, 253 U.S. 421, 425 (1920), affirmed a court of appeals decision holding that the Commission "has no jurisdiction to determine the merits of specific individual grievances."

Federal Trade Comm'n v. Beech-Nut Co., 257 U.S. 441 (1922), enforced a Commission order against a resale price maintenance scheme which suppressed competition and obstructed a free flow of commerce.

Federal Trade Comm'n v. Winsted Co., 258 U.S. 483 (1922), enforced a Commission order where goods, falsely branded as "Natural Merino" or otherwise as wool in fact were largely cotton.

Federal Trade Comm'n v. Eastman Co., 274 U.S. 619 (1927), held that the Board had no power to order the Company to divest itself of physical property acquired prior to Commission action even though the property acquired and held was in furtherance of a scheme of unfair competition. At page 623 the Court said: "The Commission exercises only the administrative function delegated to it by the Act; not judicial powers. [Citing cases] It has not been delegated the authority of a court of equity."

Federal Trade Comm'n v. Klesner, 280 U.S. 19 (1929), refused enforcement where mere confusion in competing business names failed to establish "specific and substantial" public interest.

Federal Trade Comm'n v. Raladam Co., 283 U.S. 643, 652-653 (1931), denied enforcement of an order against a dangerously misleading obesity "cure" where there was a failure of demonstration that advertising "substantially injured or tended thus to injure the business of any competitor

or of competitors generally. . . ." Compare *Federal Trade Comm'n v. Raladam Co.*, 316 U.S. 149 (1942).

Federal Trade Comm'n v. Milling Co., 288 U.S. 212 (1933), enforced an order against respondents who called themselves milling companies but ground no grain, thus deceiving the public.

Federal Trade Comm'n v. Algoma Co., 291 U.S. 67 (1934), enforced a Commission order against some fifty manufacturers with widespread market who resorted to use of a trade name "California White Pine" upon a much inferior and cheaper species of pine, resulting in complete misrepresentation of the thing supplied.

Federal Trade Comm'n v. Keppel & Bro., 291 U.S. 304 (1934), enforced an order against unlawful competition by many manufacturers of candy who enticed children to buy through resort to a sales scheme which included a chance of their getting their money back.

Federal Trade Comm'n v. Education Society, 302 U.S. 112 (1937), enforced a Commission order against false representations, inter alia, that books were free where many teachers and others testified to being deceived and deluded.

Federal Trade Comm'n v. Bunte Bros., 312 U.S. 349 (1941), refused an order against an intra-state candy sale scheme, like that in the *Keppel* case, but referred to examples of unfair competition, "which run the gamut from bribing employees of prospective customers to selling below cost for hindering competition." 312 U.S. at 354 n.4.

Fashion Guild v. Federal Trade Comm'n, 312 U.S. 457 (1941), held that purposes and practices contrary to the Sherman Act and the Clayton Act were within the Commission's jurisdiction where one hundred seventy six manufacturers and thousands of retailers combined to restrain competition, especially where an organized boycott of nonconforming competitors had a tendency to create monopoly.

Siegel Co. v. Federal Trade Comm'n, 327 U.S. 608 (1946), outlined the problem presented upon judicial review where the Commission had failed to consider or make findings as to whether a trade name, Alpacuna, could be saved.

Federal Trade Comm'n v. A. P. W. Paper Co., 328 U.S. 193 (1946), refused enforcement of a Commission order forbidding the use of "Red Cross" in advertising where there was no fraud but where some of the public thought that goods were made in accordance with standards of,

or by virtue of some connection with, the American Red Cross. (And see p. 199 and note 4 concerning the effect of the 1938 amendment to the Federal Trade Commission Act.)

Price differential problems under the Robinson-Patman Act, *Federal Trade Comm'n v. Morton Salt Co.*, 334 U.S. 37 (1948); *Federal Trade Comm'n v. Ruberoid Co.*, 343 U.S. 470 (1952); *Federal Trade Comm'n v. Minneapolis-Honeywell Co.*, 344 U.S. 206 (1952), where Commission orders were sustained, may be compared with those in *Standard Oil Co. v. Federal Trade Comm'n*, 340 U.S. 231 (1951), and *Automatic Canteen Co. v. Federal Trade Comm'n*, 346 U.S. 61 (1953), where enforcement was refused. Exclusive contracts as restraint of competition and possessing a tendency to monopoly were considered in *Federal Trade Comm'n v. Motion Picture Adv. Co.*, 344 U.S. 392 (1953), and comparable questions in yet other cases we need not cite.

[fols. 437-439] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1955

No. 12,041

NORTH AMERICAN AIRLINES, INC., Petitioner,

v.

CIVIL AERONAUTICS BOARD, Respondent,

AMERICAN AIRLINES, INC., Intervenor

On Petition for Review of Order of the Civil Aeronautics
Board.

Before Prettyman, Fahy and Danaher, Circuit Judges

JUDGMENT AND DECREE—June 23, 1955.

This case came on to be heard on the record from the Civil Aeronautics Board, and was argued by counsel.

On consideration whereof, It is adjudged and decreed by this Court that the order of the Civil Aeronautics Board on review in this case be, and the same is hereby, reversed and set aside, and that this case be, and it is hereby, remanded to the said Civil Aeronautics Board for further proceedings not inconsistent with the opinion of this Court.

Dated: June 23, 1955.

Per Circuit Judge Danaher.

[fol. 440] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 441] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1955

No. 410

AMERICAN AIRLINES, INCORPORATED, Petitioner,

vs.

NORTH AMERICAN AIRLINES, INCORPORATED

ORDER ALLOWING CERTIORARI—Filed November 14, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5557-4)